05-1031

Supreme Court, U.S.
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IN THE

Supreme Court of the United States

THOMAS PALLOTTA,
Petitioner,

v.

JOANNE B. BARNHART
Commissioner of Social Security,
Respondent.

Petition for a Writ of Certiorari to the United States Court of Appeals for the Third Circuit

PETITION FOR A WRIT OF CERTIORARI

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QUESTION PRESENTED

This case presents the following question concerning review of Administrative Agency due process procedures.

Should Military Veterans who have served this country honorably be given the same constitutionally guaranteed due process prehearing procedural rights applicable to the processing of disability claims as are normally given to SSA employees and counsel for SSA?

PARTIES TO THE PROCEEDING

Thomas Pallotta

Joanne B. Barnhart
Commissioner of Social Security

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OPINIONS AND ORDERS BELOW

The decision of the United States Court of Appeals for the Third Circuit (August 18, 2005), is reprinted at Petitioner's Appendix (Pet. App.) 1a to 6a. Rehearing *en banc* was denied on November 10, 2005, reprinted at Pet. App. 19a. District Court order (July 19, 2004), is reprinted at Pet. App. 7a to 11a. The third order of dismissal from Newark ALJ Office (August 4, 2003), is reprinted at Pet. App. 12a to 13a. The official opinion and action of appeals council which is the Commissioner's final decision, i.e., final disposition (Feb. 27, 2004), is reprinted at Pet. App. 14a to 15a. The official final disposition notice from the commissioner that refers to the prior official opinion and action of the appeals council (as of: 05/18/2004), is reprinted at Pet. App. 16a. The appeals council order vacating the prior final disposition notice (March 29, 2004), is reprinted at Pet. App. 17a to 18a.

BASIS FOR JURISDICTION

This court has jurisdiction under 42 U.S.C. § 405(g) and court rule 10. An order denying petitioner's request for re-hearing en banc was issued on November 10, 2005, Pet. App. 19a, and the court's mandate was issued on November 18, 2005. 28 U.S.C. § 1254(1).

STATUTES AND REGULATIONS INVOLVED

20 CFR 404.970, is reprinted at Pet. App. 22a.

42 U.S.C. 405(g), is reprinted at Pet. App. 23a.

STATEMENT OF THE CASE

This document is a constitutional due process procedural claim. In 1983 the Social Security Administration (SSA) wrongfully denied disability benefits. Erroneous deprivation of such property rights is occurring due to SSA refusal to stop

engaging in procedural default. *Mathews v. Eldridge*, 96 S. Ct. 893, 903 (19

SSA is claiming that Petitioner did not present a constitutional due process procedural claim that would give the courts subject matter jurisdiction. Petitioner raised the due process violations detailed below before SSA, the District Court, and Appeals Court. Therefore these issues have been preserved for appeal. When constitutional due process rights are violated the courts must remand to the agency for a full and fair evidentiary hearing.

In 1996 Petitioner filed a application to reopen a 1983 disability claim. Pet. App. 24a to 27a. Opposing counsel asserted that the application was denied both initially and upon reconsideration on the grounds of *res judicata*. It is noted that defendant asserts that a July 30, 1993 reconsideration determination is the final merits determination for the 1983 claim.

It is also noted for the record that Petitioner had never before been given a first time full and fair evidentiary hearing, nor any hearing of any kind. Due process requires that any hearing afforded claimant be full and fair. *Ventura v. Shalala*, 55 F. Rep. 3d 900, 902 (1995); *Richardson v. Perales*, 91 S. Ct. 1420 at 1427-28 (1971).

Petitioner infers these laws of case doctrine are referring to first time hearings following reconsideration denials. Fair means due process procedural fairness, procedural safeguards, procedural hearing rights protection. August 26, 1998 Notice of Hearing. Pet. App. 28a to 32a. ALJ offers a full evidentiary hearing. This offer of a full evidentiary hearing is allowed when prior disability claims are reopened. Therefore the 1983 claim was reopened. If 1983 claim was not reopened then ALJ would not offer petitioner a full evidentiary hearing. This notice of hearing is the same kind of notice that all claimants receive following a reconsideration denial.

Following a reconsideration denial a hearing must be full and fair. The ALJ hearing is a *de novo* review. The precedent set in *Richardson v. Perales*, 91 S. Ct. 1420 (1971) is instructive, binding, and final. There is no discretion for independent judgment from SSA and the lower reviewing courts. Accordingly petitioner must be given a full and fair evidentiary hearing following the 1996 reconsideration denial once the ALJ mailed the notice of hearing to petitioner.

September 15, 1998 acknowledgment of Notice of Hearing, Pet. App. 33a to 34a. Petitioner filed a written notice to request due process procedural right to review file and make copies of documents in file on a day before the scheduled hearing to prepare for the hearing. ALJ has a open file policy to view and copy evidence in file before hearing. *Puckett v. Chater*, 100 F. Rep. 3d 730, 731 (1996). This law of case doctrine is referring to due process hearing procedural rights and is instructive. This procedural right had been previously allowed in 1993 to take place at Hackensack SSA District Office where the file is kept. In 1998 this ALJ denied this due process hearing procedural right. That denial is procedural default. *Boddie v. Connecticut*, 91 S. Ct. 780, 781, 786 (1971). On account of that procedural default petitioner refused to participate in the evidentiary hearing. *Mercer v. Birchman*, 700 F. Rep. 2d 828, 829, 830 (1983).

In this second circuit legal service representatives will not participate in hearings that are in procedural default. This pro se petitioner takes the same position. Procedural default makes it difficult to properly defend a disability claim because petitioner is denied the right to prehearing disclosure of proposed exhibits, and right to make copies of exhibits.

April 12, 1999, the same ALJ mails petitioner a second notice of hearing. Pet. App. 35a to 39a. Same offer of a evidentiary hearing.

April 16, 1999 acknowledgment of Notice of Hearing. Pet. App. 40a to 42a. Petitioner filed a second written notice requesting due process hearing procedural rights. Procedural fairness is the law of the land. Same ALJ again denied this written notice. That denial is again procedural default. Petitioner again for good cause reason refused to participate at hearing. See Applicable cases above. Petitioner would not cave in to procedural default. This caused ALJ to dismiss hearing request and to conclude that the prior claim can not be reopened, and he also invoked *res judicata* on the prior final denial of benefits. SSA repeatedly defended *res judicata* and the reviewing courts affirmed.

It is noted for the record that SSA may not invoke *res judicata* on the prior 1993 final determination because there was no prior hearing, *i.e.*, no prior adjudication that would allow invoking *res judicata*. *Dealy v. Heckler*, 616 F. Supp. 880, 888 (1984). This ALJ two times reopened 1983 claim by offering petitioner two first time full evidentiary hearings, but when petitioner refused to cave in to procedural default, this ALJ in his dismissal purported to refuse reopening.

On account of procedural default and error of law petitioner filed for appeals council review of ALJ dismissal. Petitioner gave appeals council new and material evidence showing continuity and severity of combined medical impairments present since filing 1983 disability application. Appeals council vacated, overturned and reversed ALJ's actions, findings, conclusions, pursuant to broad violation of 404.970 Criteria. *Parris v. Heckler*, 733 F. Rep. 2d 324, 326 (1984); *Bauzo v. Bowen*, 803 F. Rep. 2d 917, 920 (1986). SSA Reg. 404.970 is reprinted at Pet. App. 22a. Reversal means that the ALJ denial to reopen 1983 claim was reversed by appeals council to a granting of reopening of 1983 claim. Broad violation of 404.970 criteria involved ALJ abuse of discretion, ALJ engaged in error of law, actions, findings and conclusions of ALJ are not supported with substantial

evidence, there is a procedural issue involvement which for petitioner means ALJ violation of constitutionally protected due process hearing procedural rights. It is noted for the record that when new and material evidence is furnished to appeals council that based on SSA regulations, this is good cause reason for reopening. Petitioner met this criteria for reopening because appeals council invoked broad violation of 404.970 criteria.

This court knows that reopening entitled petitioner to a *de novo* full and fair evidentiary hearing, bars *res judicata*, effects a final decision so that the courts have subject matter jurisdiction to remand back to SSA, if agency error occurs, so SSA can correct all of its own errors. This is true when no prior hearing was held.

Aversa v. Secretary, 672 F. Supp. 775 (1987); *Brown v. Sullivan*, 932 F. 2d 1243 (1991); *Cleaton v. Secretary*, 815 F. Rep. 2d 295. 404.970 review is a de novo review by appeals council, so that the entire record must be evaluated, which therefore must include evaluation of all the merits. If a subsequent disability claim has been reconsidered on the merits to any extent and at any administrative level, then the claim has been reopened.

McGowen v. Harris, 666 F. Rep. 2d 60, 61 (1981). 404.970 review is not a threshold inquiry. Therefore because all the merits in petitioner's file were evaluated by appeals council pursuant to 404.970 review petitioner must now be given a full and fair evidentiary hearing.

In addition, because appeals council remanded for a hearing, due process requires that any first hearing afforded petitioner must be full and fair. See applicable cases above.

April 26, 2001, Notice of Hearing. Pet. App. 43a to 47a. A second ALJ officer using same kind of Notice of Hearing offers petitioner another evidentiary hearing.

April 30, 2001, Acknowledgment of Receipt (Notice of Hearing). Pet. App. 48a to 50a. This written notice again requests due process prehearing procedural rights. *Puckett v. Chater*, 100 F. Rep. 3d 730, 731 (1996). Again this law of case doctrine is detailing constitutionally guaranteed due process prehearing procedural rights. This second ALJ again commits procedural default by denying the procedural request. He again dismissed hearing request and again denied reopening in violation of prior appeals council reversal of last ALJ refusal to reopen, and again in violation of *Dealy v. Heckler*, 616 F. Supp. 880 888 (1984) invokes *res judicata* where no prior hearing (adjudication) had ever occurred. On account of same procedural default petitioner refused to participate at hearing. *Mercer v. Birchman*, 700 F. 2d 828-830 (1983). Petitioner filed a second application with appeals council to review ALJ dismissal. Petitioner again furnished appeals council with new and material evidence showing continuity and severity of medical impairments present since filing 1983 claim.

Appeals council again vacates, overturns, and reverses ALJ actions, findings, and conclusions pursuant to broad violation of 404.970 criteria. Pet. App. 22a. *Parris v. Heckler*, 733 F. Rep. 2d 324, 326 (1984); *Bauzo v. Bowen*, 803 F. Rep. 2d 917, 920 (1986). Again due process requires that any first time hearing afforded to claimants must be full and fair. *Ventura v. Shalala*, 55 F. Rep. 3d 900, 902 (1995); *Richardson v. Perales*, 91 S. Ct. 1420 at 1427-28 (1971). A third ALJ schedules another hearing for July 18, 2003. On July 10, 2003 Petitioner files for the fourth time a acknowledgment of receipt (Notice of Hearing). Pet. App. 51a to 53a. Petitioner again in writing requested prehearing due process procedural hearing rights, to prepare for scheduled hearing. This third ALJ again committed procedural default by denying Petitioner's written request for procedural fairness. This procedural default again violates *Boddie v. Connecticut*, 91 S. Ct. 780, 781, 786 (1971).

Petitioner refuses to participate at hearing where procedural default is occurring. *Mercer v. Birchman*, 700 F. Rep. 2d. 828, 829, 830 (1983).

August 4, 2003 dismissal of hearing request. Pet. App. 12a to 13a. This third ALJ again refuses to allow constitutionally guaranteed due process prehearing procedural rights. He refers to Petitioner's written notices for due process procedural rights as "silly," "a game" and "frivolous." This ALJ also states that the appeals council reasoning is "convoluted." The "convoluted" remark refers to appeals council-repeated vacations and reversals of prior ALJ actions, findings and conclusions, due to broad violation of 404.970 criteria. Pet. App. 22a.

On account of the due process procedural violations by Newark ALJ office the SSA office of the regional chief administrative law judge advised Petitioner that the White Plains hearing office would schedule the next hearing. Pet. App. 54a.

However, on February 27, 2004, the commissioner issued the final disposition in Petitioner's case. Pet. App. 14a to 16a. This final disposition gives the courts subject matter jurisdiction. Petitioners now has only sixty days from 2/27/04, final disposition notice to file for Judicial review. Petitioner filed timely request for Judicial review on April 30, 2004. However on March 29, 2004 appeals council tries to unlawfully vacate the prior 2/27/04 final disposition, by again, a third time, invoking broad violation of 404.970 criteria. Pet. App. 17a to 18a. This unlawful action violates *Shin v. Sullivan*, 915 F. Rep. 2d. 1186 (1990) which instructs that vacation does not revoke finality. This unlawful vacation also violates *Mullane v. Central Hanover Bank and Trust Co. et al.*, 70 S. Ct. 652, 653 (1950) which instructs that in Petitioner's case, the final disposition notice is to be accorded due process finality. Due process finality gives the courts subject matter jurisdiction. That 3/29/04 SSA vacation tries to

unlawfully remove the surety of the prior 2/27/04 final disposition of the commissioner, which if allowed, then removes subject matter jurisdiction from the courts. Such unlawful action by appeals council violates due process finality as detailed in legal argument below. Opposing counsel gave that final disposition notice to the District Court. Petitioner gave the same final disposition notice to the Court of Appeals.

Therefore this issue of administrative finality was preserved for appeal. Petitioner also gave SSA, District Court, and Appeals Court medical evidence showing good cause reason to change hearing location from Newark to Hackensack ALJ main street office as SSA regulations require. Petitioner is legally disabled beginning in 1983 pursuant to 1979-1986 4.03 listing criteria and medical vocational guideline grid rules.

The Appeals Court received from Petitioner the same medical evidence that Petitioner gave to SSA, which included medical evidence of Heart Failure, Paralysis, End Organ damage seen in old infarction *i.e.*, old Stroke. Under SSA regulations this good cause medical evidence allows for a change of hearing from Newark to Hackensack ALJ office. Yet the appeals court painted a false picture in the panel opinion, page 6, that Petitioner failed to appear at Newark ALJ hearing without good cause. The Appeals Court painted this false picture as an excuse to affirm the District court's order that dismissed Petitioner's complaint for lack of subject matter jurisdiction. Page 7. Pet. App. 1a to 6a. However, Petitioner's combined impairments present since 1983, are of such severity that appeals council had to three times invoke broad violation of 404.970 criteria. This proves that appeals court painted a false picture as detailed above. 404.970 review is a de novo review of the entire record including the Merits (Medical evidence) by appeals council. Opposing counsel uses this unlawful 3/29/04 appeals council vacation to paint a picture that Petitioner filed for judicial review

before exhausting administrative remedies. Opposing counsel relies on this unlawful vacation of the prior 2/27/04 final disposition notice to remove subject matter jurisdiction from the courts.

Opposing counsel and the two lower reviewing courts know that Petitioner had only sixty days to file for judicial review after the 2/27/04 final disposition notice was issued. Beginning with the 1996 filing of application to reopen 1983 claim, SSA officials have managed to keep this claim in limbo and out of judicial review for eight years by going back and forth with dismissals and remands. Opposing counsel wants to keep this claim in limbo and out of judicial review by contending that the 3/29/04 appeals council remand can be relied upon to remove the surety of the 2/27/04 final disposition notice which gives the courts subject matter jurisdiction.

It is abuse abuse of discretion for SSA to keep a disability claim out of judicial review for eight years. Vacation does not revoke finality. *Shin v. Sullivan*, 915 F. Rep. 2d 1186 (1990); the purpose of a final disposition notice is to prevent persons from procrastinating for more than the allowed time before bringing suit. *Trepina v. Wood*, 227 F. Supp. 726, 729 (1964); a final disposition is conclusive upon all officers of the government and once allowed cannot be subject to further negotiations. *Ferriera v. United States*, 389 F. Rep. 2d. 191, 193 (1968); Petitioner's final disposition notice is to be accorded due process finality. *Mullane v. Central Hanover Bank and Trust Co.*, 70 S. Ct. 652, 653 (1950).

The above constitutional due process procedures rights concerning finality were repeatedly raised in Petitioner's Briefs, reply briefs, and etc., papers handed in by Petitioner, which were filed by the courts, and therefore these constitutional rights relevant to due process finality were preserved for appeal, District court dismissed with prejudice. Dismissed with prejudice is a "final and appealable order." *Lody v.*

Secretary, 451 F. Rep. 2d. 871, 872 (1971). A final and appealable order is to be accorded full due process when the appeals court reviews the case. Opposing counsel contends that 405(g) Pet. App. 23a precludes judicial review because Petitioner never received a hearing. However, Petitioner's claim is a constitutional due process claim. When constitutional due process violations have occurred judicial review is available despite the absence of an administrative hearing. *Califano v. Sanders*, 97 S. Ct. 980, 981, 986 (1977). District court granted commissioner's motion to dismiss. Pet. App. 7a to 11a. Petitioner brought these constitutional due process procedural defaults being committed against this Petitioner, who is a veteran to the attention of the appeals court. Petitioner gave appeals court a copy of Petitioner's Honorable Discharge from the United States Army. Pet. App. 55a.

Appeals court affirmed for District Court. Pet. App. 1a to 6a. Rehearing en banc was denied. Pet. App. 19a. Pro se Petitioner petitions for review by this court.

REASONS FOR GRANTING THE WRIT

Supreme Court review is warranted because the court of appeals decision overturns basic and previously well under stood requirements for the review of administrative agency decisions, specifically that: the courts have subject matter jurisdiction to review disability claims when constitutional questions are in issue, and where no prior ALJ hearings were held.

Constitutional claims do not require exhaustion of administrative remedies to effect judicial review. *Califano v. Sanders*, 97 S. Ct. 980, 981, 986 (1977); *Giacone v. Schweiker*, 656 F. Rep. 2d. 1238, 1239 (1981); *Dealy v. Heckler*, 616 F. Supp. 880 (1984); *Christopher v. Secretary*, 702 F. Supp. 41, 42 (1989); *Butland v. Bowen*, 673 F. Supp. 638, 639 (1987). The court of appeals erroneously asserts it has no subject matter jurisdiction to correct and remedy the constitutional

due process procedural defaults detailed in this petition. SSA has a constitutional due process open file policy that allows claimants to view and copy evidence in file before hearing. *Puckett v. Chater*, 100 F. Rep. 3d. 730, 731 (1996). Since 1998, SSA violates this constitutional due process right of Petitioner. Appeals court asserts erroneously it has no subject matter jurisdiction to correct and remedy this procedural default.

Constitutional due process claims permit the entry of default judgment against defendant who after adequate notice, ... Without justifiable excuse, violates a procedural rule requiring the production of evidence necessary for orderly adjudication.

Boddie v. Connecticut, 91 S. Ct. 780, 781 (1971). Beginning in 1998 SSA is in procedural default, by not allowing Petitioner to review and copy evidence in Petitioner's own file, which is necessary for orderly adjudication. Appeals court erroneously asserts it has no subject matter jurisdiction to correct and remedy this due process procedural default. When constitutionally guaranteed due process prehearing procedural rights are wrongfully denied by ALJ, a claimant's representative will refuse to participate in the scheduled hearing. Pro se Petitioner also refuses to participate in a hearing that is in procedural default. *Mercer v. Birchman*, 700 F. Rep. 2d. 828, 829, 830 (1983).

"The fundamental guaranty of due process is absolute, and not merely relative."

Hammond Packing Co. v. Arkansas, 29 S. Ct. 370, 379 (1909). SSA violates this guaranty of due process by not allowing prehearing viewing and copying of evidence in the file before the scheduled hearing date. When constitutional due process rights are violated, case must be remanded for a full and fair hearing. *Dealy v. Heckler*, 616 F. Supp. 880, 881 (1984); *Ventura v. Shalala*, 55 F. Rep. 3d. 900 (1995);

Gonzales v. Sullivan, 914 F. Rep. 2d. 1197, 1198, 1199 (1990); *Butland v. Bowen*, 673 F. Supp. 638, 639 (1987).

Due process requires that any hearing afforded claimant be full and fair. *Ventura v. Shalala*, 55 F. Rep. 3d. 900 (1995)' *Richardson v. Perales*, 91 S. Ct. 1420 at 1427-28 (1971). The court of appeals refuses to give Petitioner a full and fair hearing even though that court knows that SSA is in procedural default. Fair means prehearing fairness to view and copy evidence in file which is necessary for orderly adjudication.

In social security disability claims due process must be given to all recipients. *Richardson v. Perales*, 91 S. Ct. 1420, 1427 (1971); *Dealy v. Heckler*, 616 F. Supp. 880, 885 (1984). Procedural due process must be afforded the recipients receiving assistance from government programs. *Goldberg v. Kelly*, 90 S. Ct. 1011, 1017, 1018 (1970); *Dealy v. Heckler*, 616 F. Supp. 880, 886 (1984).

The purpose of a final disposition notice is to prevent persons who are informed that their claims are no longer being considered, from procrastinating for more than the allowed time limit before bringing suit. *Trepina v. Wood*, 227 F. Supp. 726, 729 (1964). A final disposition is conclusive upon all officers of the government, and once allowed cannot be subject to further negotiation. *Ferriera v. United States*, 389 F. Rep. 2d. 191, 193 (1968). The District Court and Court of Appeals had subject matter jurisdiction to review a "final disposition" notice from a government agency. *International T. and T. Corp. v. Local 134, Int. Bro. of Elec. W.*, 95 S. Ct. 600, 601 (1975).

The final disposition notice given to Petitioner dated 2/27/04 Pet. App. 14a to 16a is to be accorded due process finality. *Mullane v. Central Hanove Bank and Trust Co.*, 70 S. Ct. 652, 653 (1950).

That final disposition notice let Petitioner know he had only sixty days to file for judicial review. Therefore District Court was in error to think that the 3/29/04 appeals council remand can vacate the prior 2/27/04 final disposition from the commissioner. SSA may not vacate and revoke the finality of the 2/27/04 final disposition by the appeals council. Vacation does not revoke finality.

Shin v. Sullivan, 915 F. Rep. 2d. 1186 (1990). When SSA tried to vacate the 2/27/04 final disposition of the commissioner, SSA exceeded its authority granted by the regulations and laws of case doctrine, deprived Petitioner of fair notice of the secretary's intentions, stripped away the protective cloak of due process and destroyed the surety which a final, binding decision should guarantee. Finality is basic to every adjudicatory system. The principle of finality is essential to the maintenance of social order. The SSA's 3/29/04 vacation of the commissioner's prior 2/27/04 final disposition is procedural due process violation.

Mullane v. Central Hanover Bank and Trust Co., 70 S. Ct. 652, 653 (1950); *Mathews v. Eldridge*, 96 S. Ct. 893, 894 (1976). Therefore district court is in error to think that the 3/29/04 remand can vacate the 2/27/04 final disposition notice. That 2/27/04 final disposition notice gave district court subject matter jurisdiction to correct and remedy the above procedural default. In addition because Petitioner's claim is a constitutional due process claim exhaustion of administrative remedies was not required as asserted by district court.

Califano v. Sanders, 97 S. Ct. 980, 981, 986 (1977). SSA must conduct the administrative review process in an informal nonadversary manner. *Sims v. Apfel*, 120 S. Ct. 2080, 2085 (2000). Beginning in 1998 SSA is denying Petitioner constitutionally guaranteed due process prehearing procedural rights as detailed above. This prehearing proce-

dural violation certainly is adversary and accordingly violated *Sims v. Apfel*, 120 S. Ct. 2080, 2085 (2000).

The Newark ALJ office is violating its own due process hearing procedures since 1998 after receiving repeated written notices from Petitioner requesting prehearing review and copying of evidence in file. If agency violates its own procedural rules, any action taken as a result cannot stand.

Scott v. Heckler, 768 F. Rep. 2d. 172, 178-79 (1985); *Howard v. Heckler*, 661 F. Supp. 654, 656 (1986). When the appeals council invokes broad violation of 404.970 criteria by ALJ office , the appeals council is vacating and reversing the ALJ's actions, findings, and conclusions. *Parris v. Heckler*, 733 F. Rep. 2d. 324, 326 (1984); *Bauzo v. Bowen*, 803 F. Rep. 2d. 917, 920 (1986), 20 CFR 404.970 Pet. App. 22a. Broad violation of 404.970 means ALJ office is committing error of law, plus that there is a procedural issue involvement that needs to be taken care of, which for Petitioner means ALJ violation of prehearing procedural right to review and copy evidence in the file. When the ALJ office concluded it is denying the reopening of the 1983 claim, and the appeals council reversed that conclusion pursuant to Broad violation of 404.970 criteria, this means that the appeals council overruled the ALJ conclusion and granted the reopening of 1983 claim, as requested in the 1996 application. Reopening entitles Petitioner to a full and fair evidentiary hearing based on the merits. *Aversa v. Secretary*, 672 F. Supp. 775 (1987); *Brown v. Sullivan*, 932 F. 2d 1243 (1991); *Cleaton v. Secretary*, 815 F. Rep. 2d. 295 (1987).

Courts, to protect due process, must be particularly vigilant and must hold administrative agencies, such as Social Security Administration, to strict adherence to both letter and spirit of their own rules and regulations. *Call v. Heckler*, 647 F. Supp. 560, 561 (1986). The third circuit court of appeals, en banc, is violating the common law doctrine of stare decisis. The en banc court is violating the above applicable

supreme court rulings and third circuit court rulings relevant to the constitutional issues of due process and finality and social security disability claims detailed in this petition. Precedents set by the higher courts are conclusive on the lower courts, and leave the latter no scope for independent judgement or discretion. Lower courts must abide by their own former decisions, and not depart from or vary from them unless entirely satisfied. *Allegheny Gen. Hosp v. N.L.R.B.*, 608 F. Rep. 2d 965, 969, 970 (1979).

A remand to the appeals council is required to correct and remedy the above procedural defaults, and to give petitioner a full and fair evidentiary hearing as law requires. Where an agency decision is in error, it is the duty of the courts to lay the error bare, and remand to the agency, so that the agency may correct its error. The court of appeals decision violates basic precepts in numerous laws of case doctrine detailed in this petition. For years petitioner has been bringing the above argument and applicable laws of case doctrine to SSA officials. Agency action is arbitrary and capricious if the agency . . . ignores important arguments . . ."

Natural Resources Defense Council v. EPA, 822 F. 2d 104, 111 (1987). The two lower reviewing courts were unable to refute with appropriate rationale the legal argum ts and applicable stare decisis laws of case doctrine that petitioner gave to these courts. The gravity of the wrong doing by Newark ALJ office is hammered home by the December 18, 2003 letter Pet. App. 54a, from the N.Y. office of the Regional Chief Administrative Law judge who tries to put a stop to years of procedural default by advising petitioner that the White Plains Hearing Office will schedule the next hearing.

Erroneous denial of disability benefits in 1983 rested on numerous misinterpretations of medical and other evidence produced, *i.e.*, Xrays, Ekgs, etc.

Anderson v. Weinberger, 380 F. Supp. 640, 641 (1974). This is manifest injustice. This wrongful denial of disability benefits must be reversed and benefits awarded retroactive to 1982, if Petitioner is legally disabled in 1982, and if revised medical reports prove misinterpretation of medical evidence produced relevant to 1983 disability application.

Both district Court and Court of Appeals en banc were fully aware of this injustice because Petitioner gave these two lower reviewing courts medical evidence proving misinterpretation of medical evidence when Petitioner filed his briefs with the courts. These lower courts allowed this injustice by not mentioning this injustice in the decisions they filed. These lower courts allow SSA to get away with this injustice, when they assert they have no subject matter jurisdiction. The laws of case doctrine detailed in this petition make clear that these lower courts should have remanded to the appeals council for purpose that appeals council correct this injustice and award benefits retroactive to 1982 if Petitioner is legally disabled in 1982.

REMAND IS APPROPRIATE

To repair the basic harm to the settled fabric of the law of judicial review of administrative decisions, this petition should be granted. The appeals court contravened the most basic principles of law, that when the reviewing court finds agency error involving constitutional due process procedural default, the reviewing court must remand to agency, so that agency may correct its error. The appeals court knows that the appeals council found agency error of law, and procedural issue problems with ALJ office because appeals council three times reversed ALJ actions, findings, and conclusions pursuant to broad violation of 404.970 criteria. The three vacations i.e., reversals were given to the Court of Appeals by Petitioner.

This court has jurisdiction under court rule 10, because the Court of Appeals en banc has departed from the accepted and usual coarse of judicial proceedings, which calls for an exercise of this court's supervisory power. The appeals court en banc violated the common law doctrine of precedent or *stare decises*. Precedents set by the Supreme Court as detailed in this petition are conclusive on the Court of Appeals, including precedents instructive of due process law and finality issues. The Court of Appeals was required to enter a default judgment against SSA for not allowing Petitioner due process prehearing right to view and make copies of evidence in the file which was necessary for orderly adjudication of Petitioner's claim. *Boddie v. Connecticut*, 91 S. Ct. 780, 781 (1971); *Hammond Packing Co. v. Arkansas*, 29 S. Ct. 370, 380 (1909). Under court rule 10, the Court of Appeals decision should be vacated and case remanded to the appeals council, so that appeals council can correct its errors and award Petitioner disability benefits retroactive to 1982 if in fact Petitioner is legally disabled in 1982 based on the 1979-1986 4.03 listing criteria and/or based on the medical vocational guideline grid rules. The Court of Appeals was required to remand. Remand is appropriate.

Petitioner is a veteran. Pet. App. 55a. All veterans are entitled to equal protection under the law. SSA employees and opposing counsel are entitled to the constitutionally guaranteed due process prehearing procedural rights detailed in this petition pursuant to the processing of disability claims. In this country, the law of the land, provides that all veterans are entitled to the same due process rights that SSA employees and opposing counsel would receive if they were ever to file for disability benefits. SSA repeatedly denied this veteran constitutionally guaranteed due process prehearing procedural rights. This is procedural default. Pursuant to court rule 10, this court should remand to appeals council, so that appeals council can correct its errors.

Petitioner should be granted a full and fair evidentiary hearing, with full constitutional due process safeguards. The hearing should be conducted, not by Newark ALJ officers, who are engaging in procedural default beginning in 1998, but by the White Plains Hearing Office as advised in the December 18, 2003 letter from the office of the regional chief administrative law judge. Pet. App. 54a. The hearing should be conducted in the Hackensack ALJ office on Main Street preferably on a cool day because of Heart Failure that Petitioner has. Both SSA and the two lower reviewing courts were given medical evidence documenting the Petitioner has Heart Failure. Petitioner gave SSA and the courts SSA regulations which explain that good cause reason for changing the hearing location from Newark to Hackensack ALJ office would be for a serious physical condition. Heart Failure is a serious physical condition.

"The fundamental guaranty of due process is absolute, and not merely relative." *Hammond Packing Co. v. Arkansas*, 29 S. Ct. 370, 379 (1909). Remand is appropriate.

CONCLUSION

The Petition for a Writ of Certiorari should be granted.

Respectfully submitted,

THOMAS PALLOTTA
Pro Se
267 13th Street
Palisades Park, NJ 07650
(201) 947-5864

APPENDIX

APPENDIX A

NOT PRECEDENTIAL

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

[Filed August 18, 2005]

No. 04-3749

THOMAS PALLOTTA,

Appellant

v.

*JO ANNE B. BARNHART,
COMMISSIONER OF SOCIAL SECURITY

*(Amended per clerk order of 10/04/04)

On Appeal From the United States District Court
For the District of New Jersey
(D.C. Civ. No. 04-cv-2044)
District. Judge: Honorable Joel A. Pisano

Submitted Under Third Circuit LAR 34.1(a)
May 2, 2005

OPINION

Before: ROTH, MCKEE AND ALDISERT, *Circuit Judges*

PER CURIAM

Pro se appellant Thomas Pallotta appeals an order of the United States District Court of New Jersey granting defendant's motions to dismiss. We will affirm.

In 1983, Pallotta filed an application for disability insurance benefits ("DIB"). Appellant's App., 71. The claim was denied and Pallotta did not pursue an appeal. *Id.* The claim was reopened in 1993 based on the existence of new evidence. *Id.* However, the Commissioner of Social Security ("the Commissioner") denied the claim initially (on February 8, 1993) and on reconsideration (on July 30, 1993). *Id.* at 44-48. In May 1996, Pallotta filed another request for DIB. *Id.* at 57-60. The Commissioner found that the application concerned issues that had been previously decided, and consequently denied the claim initially and on reconsideration. *Id.* at 61-66. In August 1999, an Administrative Law Judge ("ALJ") dismissed Pallotta's request for a hearing, finding that his application could not be reopened and that it was barred by res judicata because it "involve[d] the right of the same claimant on the same facts and on the same issues which were decided in the final and binding determination dated July 30, 1993." *Id.* at 71-72. Thereafter, on three separate occasions, the Appeals Council remanded Pallotta's claim for a limited hearing on the issues of reopening and res judicata. *Id.* at 73-75, 87-89, 98-99. Each time, however, Pallotta failed to appear and the ALJ dismissed Pallotta's request for a hearing. *Id.* at 82-86, 93-94, 116-17.

Following the Appeals Council's third remand, Pallotta filed the present action in the United States District Court for the District of New Jersey. The Commissioner moved to dismiss Pallotta's complaint for lack of subject matter jurisdiction pursuant to 42 U.S.C. § 405(g), arguing that the Commissioner had yet to render a "final decision" as required by statute. The District Court granted the defendant's motion to dismiss, finding that Pallotta failed to exhaust administrative remedies prior to filing his complaint.[1]

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[1] After the District Court entered its order, the ALJ dismissed Pallotta's request for a hearing because he did not establish good cause for his failure to appear. *See* Appellant's App., 116-17. Thereafter, the Appeals

The District Court has jurisdiction pursuant to 42 U.S.C. § 405(g) to review a final decision of the Commissioner denying an application for disability insurance benefits. We have jurisdiction to consider the issues raised by Pallotta's timely filed appeal under 28 U.S.C. § 1291, and we review de novo the District Court's determination that it lacked subject matter jurisdiction. *In re Phar-mor, Inc. Sec. Litig.*, 172 F.3d 270, 273 (3d Cir. 1999).

The Supreme Court has stated that Section 405(g) "clearly limits judicial review to a particular type of agency action, a 'final decision' of the Secretary made after a hearing." *Califano v. Sanders*, 430 U.S. 99, 108 (1977). A "final decision" is not defined by the Social Security Act, but rather has been left to be defined by Social Security Administration ("SSA"), regulations. The regulations set forth the procedures which must be followed to exhaust administrative remedies. *See* 20 C.F.R. § 404.900(a)(1)-(4).

Pallotta properly initiated the process for seeking DIB under Title II of the Social Security Act. He filed an initial application with the SSA in May 1996. *See* 20 C.F.R. § 404.902. Once it was denied, he petitioned for reconsideration. *See* 20 CFR § 404.907. As the petition was unsuccessful, he sought an evidentiary hearing before an ALJ. *See* 20 C.F.R. § 404.929. Upon receipt of adverse determinations by the ALJ, he sought review by the Appeals Council. *See* 20 CFR § 404.966. *See also Tobak v. Apfel*, 195 F.3d 183, 185 (3d Cir. 1999). In March 2004, the Appeals Council found good cause for Pallotta's failure to appear at a prior scheduled hearing and remanded his claim back to the ALJ for the scheduling of a new hearing. The claim was therefore pending before the ALJ when Pallotta filed his complaint in the District Court in April 2004. Accordingly, because there was

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Council declined review. *See* Decl. of Robin M. Marquis, 2 (attached as Exhibit B to Appellee's Br.).

not a judicially reviewable final decision, the District Court properly dismissed Pallotta's complaint for lack of subject matter jurisdiction. *See Sims v. Apfel*, 530. U.S. 103, 107 (2000).

Pallotta argues that the three Appeals Council's remands "effectively reopen[ed his] claims," resulting in "final decisions" over which the District Court had subject matter jurisdiction. Appellant's Informal Br., *passim*. We disagree. Although judicial review is not precluded where there has been a de facto or constructive reopening of the case, *see Purter v. Heckler*, 771 F.2d 682 (3d Cir. 1985), such a reopening takes place only when the Commissioner has reviewed the entire claim and made a final decision on the merits. *See Rogerson v. Sec'y of Health & Human Servs.*, 872 F.2d 24, 29 n.5 (3d Cir. 1989). Here, none of the Appeals Council's remands evidence a review of Pallotta's claims on the merits. Rather, Pallotta's claim was sent back for a limited hearing because the ALJ's August 1999 "dismissal did not provide appropriate rationale with specific references to evidence of record to support the reopening and [res judicata] dismissal determinations." *See* Appellant's App., 88; *see also, id.* at 74, 99. Accordingly, the three Appeals Council remands were not de facto reopenings.

In addition, Pallotta alleged that the lengthy delay involved in this case and the Commissioner's refusal to move the hearings from Newark, New Jersey to Hackensack, New Jersey constituted due process violations, and that the District Court should therefore have exercised jurisdiction over the matter to remedy these violations. *See* Appellant's Informal Br., 46-53. Exhaustion of administrative remedies may not be required where the appellant's claims are collateral to any claim for benefits and where the harm imposed by exhaustion would be irreparable. *See Bowen v. City of New York*, 476 U.S. 467, 483 (1986). Arguably, Pallotta's claims of due process violations are collateral to his claim for benefits, so the exhaustion

requirement may be waived. *See Matthews v. Eldridge*, 424 U.S. 319, 330-31 (1976) (holding that procedural challenge to the Secretary's denial of a pretermination hearing was wholly collateral to claim for benefits). Importantly, however, Pallotta has failed to make a colorable showing that his alleged injuries could not be remedied by the retroactive payment of benefits after the exhaustion of administrative remedies. *See id.* at 331. Indeed, Pallotta has not asserted that he will suffer any type of irreparable injury, such as severe economic harm, *see Johnson v. Shalala*, 2 F.3d 918, 922 (9th Cir. 1993), serious medical deterioration, *see Mental Health Ass'n of Minnesota v. Heckler*, 720 F.2d 965, 970 (8th Cir. 1983), or psychological stress, *see Duggan v. Bowen*, 691 F.Supp. 1487, 1508 (D.D.C. 1988). Tellingly, Pallotta has pursued his claim administratively for several years without alleging any such injury. The District Court therefore correctly dismissed Pallotta's complaint for failure to comply with the administrative exhaustion requirements of 42 U.S.C. § 405(g).

After the District Court dismissed Pallotta's complaint, the ALJ dismissed Pallotta's request for a hearing because he did not attend a hearing scheduled for July 22, 2004, and did not establish a "good reason" for his failure to appear.[2] *See* Appellant's App., 116-17. Thereafter, the Appeals Council denied Pallotta's request for review. *See* Decl. of Robin M. Marquis, 2 (attached as Exhibit B to Appellee's Br.). There is no need, however, to consider remanding the case to the District Court for further consideration. A claimant, like Pallotta, who is properly notified of a scheduled hearing but fails to appear without good cause has failed to exhaust administrative remedies and is not entitled to judicial review. *See Hoye v. Sullivan*, 985 F.2d 990, 991 (9th Cir. 1992) (per curiam) ("By refusing to attend the hearing, [claimant] waived his

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[2] In particular, the ALJ noted that the only justification Pallotta provided for his failure to appear was that it is "impossible to travel to Newark in hot, humid, muggy summer weather."

opportunity for a hearing and he failed to exhaust the administrative remedy upon which judicial review depends."). To the extent that the Appeals Council decision effectively declined to reopen a prior application or denied a subsequent application on res judicata grounds,[3] the District Court similarly lacks jurisdiction. *See Tobak v. Apfel*, 195 F.3d 183, 187 (3d Cir. 1999). Pallotta has not raised any colorable constitutional claims that would justify waiving his failure to exhaust. *See Rankin v. Heckler*, 761 F.2d 936, 940 (3d Cir. 1985) ("we have found a waiver of the exhaustion of administrative remedies requirement where the claimant raises constitutional issues") (footnote omitted).

For the foregoing reasons, we will affirm the District Court's order dismissing the complaint for lack of subject matter jurisdiction.

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[3] The issue that was to be addressed at hearing which Pallotta did not attend was whether an ALJ's prior denial of reopening and dismissal on res judicata grounds was sufficiently explained.

APPENDIX B

UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY

Chambers of
Joel A. Pisano
Judge

USPO & Courthouse
1 Federal Square, Room 417
P.O. Box 999
Newark, NJ 07101-0999
(973) 645-3136

July 19, 2004

CLOSED

LETTER ORDER
ORIGINAL FILED WITH CLERK OF THE COURT

Re: Pallotta v. Barnhart
Civil No. 04-cv-2044 (JAP)

Dear Parties:

Before this Court is a motion filed on behalf of Jo Anne Barnhart, Commissioner of Social Security (the "Commissioner") to dismiss plaintiff Thomas Pallotta's ("Pallotta" or the "Plaintiff") April 30, 2004 complaint (the "Complaint") for failure to exhaust his administrative remedies. The Court decides the motion without oral argument as permitted by Federal Rule of Civil Procedure 78, and for the reasons set forth herein, grants the Commissioner's motion.

Facts

In 1983, Pallotta filed a claim for disability insurance benefits; this claim was denied, and the case was closed. Exhibit to Plaintiff's Brief ("Ex.") at 12; *see also* Compl. at 5. In 1993, Pallotta's case was reopened because of the existence of new evidence. Ex. at 12. The claim was denied, however, on February 8, 1993, and again on reconsideration on July 30, 1993. *Id.*, Compl. at 4. Although Pallotta did not formerly request a hearing by an Administrative Law Judge ("ALJ"), his request to review his evidentiary file was treated by the

Social Security Administration ("SSA") as a constructive request for a hearing. Ex. at 12. When contacted by the SSA's Office of Hearings and Appeals to schedule a hearing date, Pallotta informed the office that he did not want a hearing. *Id.* Consequently, the constructive request for a hearing was dismissed by an ALJ in May 1994. *Id.* The Plaintiff did not appeal this claim beyond the reconsideration level.

On or about May 17, 1996, Pallotta filed a second application for disability benefits, which was initially denied on May 20, and upon reconsideration on August 6, 1996. *Id.* Pallotta requested a hearing on October 9, 1996. *Id.* In an August 27, 1999 opinion, ALJ John M. Farley found that his application should not be reopened pursuant to 20 C.F.R. 404.987 through 404.989, and dismissed the request for a hearing because *res judicata* applied to the 1993 claim. *Id.* at 12-13. In particular, the ALJ found that "[t]he claimant's current request for hearing involves the rights of the same claimant on the same facts and on the same issues which were decided in the final and binding determination dated July 30, 1993, made on the prior application." *Id.* at 13.

On or about March 10, 2000, the Appeal's Council remanded Pallotta's claim to the ALJ for a limited hearing to address only the issues of *res judicata* and reopening the case. Compl. at 5. Pallotta failed to appear at the hearing, and alleges in the Complaint that "Plaintiff does not allow initial hearings to be limited, when under the law . . . the initial hearing must be full and fair." *Id.* The ALJ dismissed Plaintiff's case for failure to appear, and Plaintiff appealed a second time. *Id.* at 6. On August 23, 2002, the Appeals Council again remanded the case to address *res judicata* and reopening. *Id.*; Declaration of Robin M. Marquis ("Marquis Decl.") Ex. 1. On or about August 4, 2003, the ALJ again dismissed Pallotta's case for failure to appear at a June 12, 2003 hearing. Marquis Decl. Ex. 1. On or about February 27, 2004, the Appeals Council denied the Plaintiff's request for review

of the ALJ's August 4, 2003 dismissal. Marquis Decl. Ex. 3. Thereafter, on March 29, 2004, the Appeals Council vacated its February 27 denial and remanded the case to the ALJ for a hearing. Marquis Decl. Ex. 4.

On April 30, 2004, Pallotta filed the Complaint in this Court, alleging constitutional violations, and seeking a "full and fair hearing" with respect to the substantive medical evidence concerning his disability claims. Compl. at 15-16. Pallotta contends that the Appeals Council's February 27, 2004 decision denying his request for review was a final decision, giving this Court jurisdiction to review his claim pursuant to 42 U.S.C. .§ 405(g), and federal regulation. *Id.* at 7-8.

Discussion

Under the Social Security Act, judicial review of Social Security determinations is only permitted "after any final decision of the Commissioner of Social Security made after a hearing to which he was a party. . . ." 42 U.S.C. § 405(g). Section 405(g) is the exclusive jurisdictional basis for claims arising under the Social Security Act. *See* 42 U.S.C. § 405(h). Left undefined by the Social Security Act, the term "final decision" is defined by the relevant federal regulations, and obligates a claimant to fully proceed through the administrative review process; a decision is not "final" until a claimant does so. 20 C.F.R. § 404.900(a). Specifically, the administrative review process requires an individual seeking benefits to obtain an initial determination, and seek reconsideration of that initial determination if not satisfied with it 20 C.F.R. § 404.900(a)(1), (2). If the claimant is not satisfied with the result on reconsideration, he or she must request a hearing before an ALJ. 20 C.F.R. § 404.900(a)(3). Finally, if the claimant is dissatisfied with the ALJ's decision, he or she must seek review by the Appeals Council. 20 C.F.R. § 404.900(a)(4). The Appeals Council may either deny the request for review and allow the ALJ's decision to stand as the final decision of the Commissioner, or it may grant the

request for review and issue its own decision. 20 C.F.R. § 404.981. Only after a claimant has completed these four steps is a decision final and judicially reviewable. 20 C.F.R. § 404.900(a)(5).

Here, Pallotta contends that the Appeals Council's February 27, 2004 decision was a final decision, authorizing judicial review. *Id.* at 7-8. However, on March 29, 2004, having found good cause for the Plaintiffs failure to appear at the hearing, the Appeals Council vacated its order and remanded the claim to the ALJ for a new hearing. Marquis Decl. Ex. 4. In light of this fact, the Court concludes that the February 27, 2004 decision was not a final decision of the Commissioner, as required by the Social Security Act. In order to proceed with the administration process and obtain a final decision, the Court strongly encourages the Plaintiff to attend the next hearing before the ALJ and seek review before the Appeals Council if he is not satisfied. Until the Appeals Council denies the Plaintiff's request for review and does not vacate that order, or issues a decision of its own, judicial review in this Court is not appropriate. The Plaintiff has failed to exhaust his administrative remedies, and this case is dismissed. *Heckler v. Ringer*, 466 U.S. 602, 626-27 (1984).

In certain circumstances, where a plaintiff's challenge to administrative review is "entirely collateral to his substantive claim of entitlement" to social security benefits, waiver of the exhaustion doctrine is appropriate. *Matthews v. Eldridge*, 424 U.S. 319, 330-31 (1976). This exception does not apply where the claim asserted is not wholly collateral to the claim for benefits, and where the claimant can not make a "colorable claim" that the retroactive payment of benefits will not remedy his injury. *Heckler*, 466 U.S. at 618. Court finds that waiver of the exhaustion doctrine does not apply in this case. In particular, the Court finds that the Plaintiff's claims here, that he is entitled to a full and fair hearing on the merits of his claim for disability benefits, is entirely related to his under-

lying, claim for benefits. Likewise, there is nothing to suggest to the Court that the administrative review process would be futile. *Id.*, 466 U.S. at 619. The Plaintiff cites *Gerber v. Shalala*, 857 F.Supp. 11, 15 (S.D.N.Y. 1994), for the proposition that unconscionable delay on the part of the Commissioner should permit judicial waiver of exhaustion. Pb. at 9-11. The Court does not find this persuasive, and finds that delay of this case has been caused by the Plaintiff himself, through his continued failure to appear before the ALJ on the issues of res judicata and reopening his case. The exhaustion requirement is not properly waived here, and the Court instructs Pallotta to continue and complete the administrative proceedings below.

Conclusion

For the reasons stated above, the Court finds that the Plaintiff has not exhausted his administrative remedies, and the Commissioner's motion to dismiss is granted. The Complaint is dismissed with prejudice. This case is closed.

So ordered.

/s/ Joel A. Pisano, U.S.D.J.

Original: Clerk of the Court
cc: All parties
Magistrate Judge Arleo
File

SOCIAL SECURITY ADMINISTRATION
Office of Hearings and Appeals

ORDER OF DISMISSAL

IN THE CASE OF	CLAIM FOR
Thomas Pallotta (Claimant)	Period of Disability and Disability Insurance Benefits
_____ (Wage Earner)	137-44-7490 Social Security Number)

This case is before an Administrative Law Judge on a Remand Order from the Appeals Council dated August 23, 2002.

On June 12, 2003, a Notice of Hearing was mailed to the claimant to advise the claimant of the time and place set for the hearing.

Social Security Administration Regulation No. 4 provides that the Administrative Law Judge may dismiss a request for hearing when the claimant does not appear at the time and place set for the hearing and good cause for failure to appear is not found, if before the hearing the claimant was notified that the request for hearing could be dismissed without further notice for failure to appear (20 CFR § 404.957(b)(1)). The Notice of Hearing sent to the claimant contained this information.

The claimant did not appear at the hearing.

We fully expect a repeat of administrative processes that have continued for more than a decade. Claimant ignores the rules; writes a frivolous appeal to the Appeals Council, which constantly ignores the frivolity because claimant loves the "game" and writes letter after letter to all levels of government. The Appeals Council also loves the "game" and will undoubtedly bow to the imagined pressure resulting from claimant's letters, thereby remanding this dismissal (as it has remanded all prior dismissals) for some convoluted reason that bears no relation to rationality or reason.

We are not even going to give the claimant a second chance to appear. It is silly and we hope somebody up there will realize it.

In view of the comment above and in accordance therewith, this case is hereby dismissed. The determination dated July 30, 1993 remains in effect as initially issued.

/s/ DEAN W. DETERMAN
Dean W. Determan
Administrative Law Judge

Aug. 4, 2003
Date

SOCIAL SECURITY ADMINISTRATION
Refer to: TAHB
137-44-7490

Office of Hearings and Appeals
5107 Leesburg Pike
Falls Church, VA 22041-3255
Telephone: (703) 605-8000
Date: Feb. 27, 2004

NOTICE OF APPEALS COUNCIL ACTION

Mr. Thomas N. Pallotta
267 13th Street
Palisades Park, NJ 07650

This is about your request for review of the Administrative Law Judge's dismissal dated August 4, 2003.

We Have Denied Your Request for Review

We found no reason under our rules to review the Administrative Law Judge's dismissal. Therefore, we have denied your request for review.

Rules We Applied

We applied the laws, regulations and rulings in effect as of the date we took this action. Under our rules, we will review your case for any of the following reasons:

- The Administrative Law Judge appears to have abused his or her discretion.
- There is an error of law.
- The decision is not supported by substantial evidence.
- There is a broad policy or procedural issue that may affect the public interest.
- We receive new and material evidence and the decision is contrary to the weight of all the evidence now in the record.

What We Considered

In looking at your case, we considered the reasons you disagree with the dismissal and the additional evidence. We found that this information does not provide a basis for changing the Administrative Law Judge's dismissal.

If You Have Any Questions

If you have any questions, you may call, write, or visit any Social Security office. If you do call or visit an office, please have this notice with you. The telephone number of the local office that serves your area is 201-678-2895. Its address is:

22 SUSSEX STREET
HACKENSACK, NJ 07601

/s/ RODNEY V. TAPP
Rodney V. Tapp
Administrative Appeals Judge

APPEALS COUNCIL
AUTOMATED PROCESSING SYSTEM

ACTIVE CASE INFORMATION as of:05/18/2004

Client: PALLOTTA, THOMAS N.
CAN: 137-44-7490
Claim Type: DIWC Workload
Type: RR
Hearing Type: 32
BIC: A
Control Date: 10/07/2003
PRB04: 10/14/2003

ANALYST: mdk Assigned: 01/22/2004 Dairy: / /
INTERIM — Disposition: Date: / /
FINAL — Disposition: DEN Date: 02/27/2004
Recommended: 01/23/2004

HO: ALJ: DISP DT: / / SSO: MEMBERS A:094

Released: 02/27/2004 5017 SCC:RCD

ACTIONS

10/14/2003	Claim File Received	PRB
01/22/2004	Assign/Reassign	mdk
01/23/2004	Branch recommendation	DEN
02/27/2004	AC Disposition Issued	DEN
02/27/2004	Release from Mini-Dockets	5017

CLIENTS

CLMT PALLOTTA, THOMAS N
267 13th Street, Palisaded Park, NJ 07650

REMARKS

10/14/03 REQUESTED CLAIM FILE THAT WAS READING IN THE HACKENSACK, NJ D/O; A/F TO OUT DRAWER (PFS)

SOCIAL SECURITY ADMINISTRATION
OFFICE OF HEARINGS AND APPEALS

ORDER OF APPEALS COUNCIL
REMANDING CASE TO ADMINISTRATIVE LAW JUDGE

In the case of	Claim for
THOMAS N. PALLOTTA (Claimant)	Period of Disability and Disability Insurance Benefits
_____ (Wage Earner) (Leave Blank if same as above)	137-44-7490 Social Security Number)

The Appeals Council hereby vacates its prior action of February 27, 2004 denying the claimant's request for review of the Administrative Law Judge's dismissal issued August 4, 2003, to consider further argument,

The Appeals Council grants the request for review under the authority of the Social Security Administration regulations (20 CFR 404.970). The Appeals Council vacates the Administrative Law Judge's order of dismissal and remands this case for further proceedings (20 CFR 404.960 and 404.977).

The Administrative Law Judge scheduled a hearing and sent a notice to the claimant about when and where the hearing would be held. The claimant did not appear at the time and place set for the hearing, and the Administrative Law Judge found that the claimant did not give a good reason for not appearing. Therefore, the Administrative Law Judge dismissed the request for hearing under 20 CFR 404.957(b).

The information before the Appeals Council shows that on July 10, 2003, the claimant presented to the officials in the Hackensack Social Security Office, the Acknowledgement Card that was appended to the Notice of Hearing. The claimant indicated that he could not be present for the scheduled hearing and he requested that the form be forwarded to the "Newark ALJ Office".

Accordingly, having considered all of the facts, the. Appeals Council finds that the claimant had a good reason for not appearing at the hearing. Therefore, the Administrative Law Judge will give the claimant another opportunity for a hearing in compliance with the Council's remand order of August 23, 2002.

The Administrative Law Judge may take any further action needed to complete the administrative record.

APPEALS COUNCIL

/s/ RODNEY V. TAPP
Rodney V. Tapp
Administrative Appeals Judge

/s/ JULIA D. GIBBS
Julia D. Gibbs
Administrative Appeals Judge

Date: MAR 29, 2004

APPENDIX C

IN THE UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

04-3749

THOMAS PALLOTTA

v.

JOANNE B. BARNHART,
COMMISSIONER OF SOCIAL SECURITY

SUR PETITION FOR PANEL REHEARING
WITH SUGGESTION FOR REHEARING *EN BANC*

PRESENT: SCIRICA, *Chief Judge*, SLOVITER, NYGAARD, ALITO, ROTH, MCKEE, RENDELL, BARRY, AMBRO, FUENTES, SMITH, FISHER, VAN ANTWERPEN, *Circuit Judges*

The petition for rehearing filed by Appellant having been submitted to the judges who participated in the decision of this Court, and to all the other available circuit judges in active service, and no judge who concurred in the decision having asked for rehearing, and a majority of the circuit judges of the circuit in regular active service not having voted for rehearing by the court en banc, the petition for rehearing is DENIED.

BY THE COURT:

/s/ Theodore A. McKee
Circuit Judge

DATED: November 10, 2005

APPENDIX D

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

No. 04-3749

THOMAS PALLOTTA,
Appellant,

v.

*JOANNE B. BARNHART,
COMMISSIONER OF SOCIAL SECURITY

*(Amended per clerk order of 10/04/04)

On Appeal From the United States District Court
For the District of New Jersey
(D.C. Civ. No. 04-cv-2044)
District Judge: Honorable Joel A. Pisano

Submitted Under Third Circuit LAR 34.1(a)
May 2, 2005

Before: ROTH, MCKEE AND ALDISERT, *Circuit Judges*

JUDGMENT

This cause came on to be heard on the record from the United States District Court for the District of New Jersey and was submitted pursuant to Third Circuit LAR 34.1(a). On consideration whereof, it is now here

ORDERED AND ADJUDGED by this court that the judgment of the district court entered July 20, 2004, be and the

same is hereby affirmed. Costs taxed against the Appellant. All of the above in accordance with the opinion of this Court.

ATTEST:

/s/ Marcia M. Waldron
Clerk

DATED: August 18, 2005

Certified as a true copy and issued in lieu of a formal mandate on 11/18/05

/s/ Marcia M. Waldron
Teste:
Clerk, U.S. Court of Appeals
for the Third Circuit

APPENDIX E

20 CFR 404.970

20 CFR 404.970. Cases The Appeals Council Will Review.

(A) The Appeals Council will review a case if—

(1) there appears to be an abuse of discretion by the administrative law judge;

(2) there is an error of law;

(3) the action, findings or conclusions of the administrative law judge are not supported by substantial evidence; or

(4) there is a broad policy or procedural issue that may affect the general public interest.

(B) If new and material evidence is submitted, the Appeals Council shall consider the additional evidence only where it relates to the period on or before the date of the administrative law judge hearing decision. The Appeals Council shall evaluate the entire record including the new and material evidence submitted if it relates to the period on or before the date of the administrative law judge hearing decision. It will then review the case if it finds that the administrative law judge's action, findings, or conclusion is contrary to the weight of the evidence currently of record.

42 U.S.C. § 405(g)

42 U.S.C. § 405(g) provides:

Any individual, after any final decision of the Commissioner of Social Security made after a hearing to which he was a party, irrespective of the amount in controversy, may obtain a review of such decision by a civil action commenced within sixty days after the mailing to him of notice of such decision or within such further time as the Commissioner of Social Security may allow.

APPENDIX F

May 17, 1996

APPLICATION FOR
DISABILITY INSURANCE BENEFITS

I APPLY FOR A PERIOD OF DISABILITY AND/OR ALL INSURANCE BENEFITS FOR WHICH I AM ELIGIBLE UNDER TITLE II AND PART A OF TITLE XVIII OF THE SOCIAL SECURITY ACT, AS PRESENTLY AMENDED.

MY NAME IS THOMAS N. PALLOTTA.

MY SOCIAL SECURITY NUMBER IS 137-44-7490.

MY DATE OF BIRTH IS FEBRUARY 11, 1951.

I BECAME UNABLE TO WORK BECAUSE OF MY DISABLING CONDITION ON MARCH 16, 1982.

I AM STILL DISABLED.

A PREVIOUS APPLICATION HAS BEEN FILED WITH THE SOCIAL SECURITY ADMINISTRATION BY OR FOR ME.

I HAVE NOT FILED NOR DO I INTEND TO FILE FOR ANY WORKERS' COMPENSATION, PUBLIC DISABILITY OR BLACK LUNG BENEFITS.

I AM-NOT ENTITLED TO NOR DO I EXPECT TO BECOME ENTITLED TO A PENSION OR ANNUITY BASED IN WHOLE OR IN PART ON WORK AFTER 1956 NOT COVERED BY SOCIAL SECURITY.

I HAVE NEVER MARRIED.

I DO NOT HAVE ANY CHILDREN WHO MAY BE ELIGIBLE FOR SOCIAL SECURITY BENEFITS ON THIS RECORD.

I UNDERSTAND THAT I MUST PROVIDE MEDICAL EVIDENCE ABOUT MY DISABILITY, OR ASSIST THE

SOCIAL SECURITY ADMINISTRATION IN OBTAINING THE EVIDENCE.

I UNDERSTAND THAT I MAY BE REQUESTED BY THE STATE DISABILITY DETERMINATION SERVICES TO HAVE A CONSULTATIVE EXAMINATION AT THE EXPENSE OF THE SOCIAL SECURITY ADMINISTRATION AND THAT IF I DO NOT GO, MY CLAIM MAY BE DENIED.

I AUTHORIZE ANY PHYSICIAN, HOSPITAL, AGENCY, OR OTHER ORGANIZATION TO DISCLOSE ANY MEDICAL RECORD OR INFORMATION ABOUT MY DISABILITY TO THE. SOCIAL SECURITY ADMINISTRATION OR TO THE STATE DISABILITY DETERMINATION SERVICES THAT MAY REVIEW MY CLAIM OR CONTINUING DISABILITY.

I AUTHORIZE THE SOCIAL SECURITY ADMINISTRATION TO RELEASE ANY INFORMATION ABOUT ME TO A PHYSICIAN OR MEDICAL FACILITY PREPARATORY TO AN EXAMINATION OR TEST. RESULTS OF SUCH EXAMINATION OR TEST MAY BE RELEASED TO MY PHYSICIAN OR OTHER TREATING SOURCE.

I AUTHORIZE THAT INFORMATION ABOUT MY DISABILITY MAY BE FURNISHED TO ANY CONTRACTOR FOR CLERICAL SERVICES BY THE STATE DISABILITY DETERMINATION SERVICES.

I AGREE TO NOTIFY THE. SOCIAL SECURITY ADMINISTRATION OF ALL EVENTS AS EXPLAINED TO ME.

I AGREE TO NOTIFY THE SOCIAL SECURITY ADMINISTRATION IF:

—MY MEDICAL CONDITION IMPROVES SO THAT I WOULD BE ABLE TO WORK, EVEN THOUGH I HAVE NOT YET RETURNED TO WORK.

—I GO TO WORK.WHETHER AS AN EMPLOYEE OR A SELF-EMPLOYED PERSON.

—I APPLY FOR OR RECEIVE A DECISION ON BENEFITS UNDER ANY WORKERS' COMPENSATION LAW OR PLAN (INCLUDING BLACK LUNG BENEFITS FROM THE DEPARTMENT OF LABOR), OR OTHER PUBLIC BENEFIT BASED ON DISABILITY.

—I AM IMPRISONED FOR CONVICTION OF A FELONY.

THE ABOVE EVENTS MAY AFFECT MY ELIGIBILTY TO DISABILITY BENEFITS AS PROVIDED IN THE SOCIAL SECURITY ACT, AS AMENDED.

I AGREE TO NOTIFY THE SOCIAL SECURITY ADMINISTRATION IF I BECOME ENTITLED TO A PENSION OR ANNUITY BASED ON EMPLOYMENT AFTER 1956 NOT COVERED BY SOCIAL SECURITY, OR IF SUCH PENSION OR ANNUITY STOPS.

MY REPORTING RESPONSIBILITIES HAVE BEEN EXPLAINED TO ME.

REMARKS:

I LAST WORKED IN 1981.

PLEASE SEE MY 10 PAGE LETTER PLUS DISABILITY FORMS AND MEDICAL RECORDS WHICH EXPLAIN WHY I AM REOPENING MY CLAIM DATED FEBRUARY, 1983.

I KNOW THAT ANYONE WHO MAKES OR CAUSES TO BE MADE A FALSE STATEMENT OR REPRESENTATION OF MATERIAL FACT IN AN APPLICATION OR FOR USE IN DETERMINING A RIGHT TO PAYMENT UNDER THE SOCIAL SECURITY ACT COMMITS A CRIME PUNISHABLE UNDER FEDERAL LAW BY

FINE, IMPRISONMENT OR BOTH, I AFFIRM THAT ALL INFORMATION I HAVE GIVEN IN CONNECTION WITH THIS CLAIM IS TRUE.

MY MAILING ADDRESS IS 267 13 ST, PALISADES PARK NJ 07650

MY TELEPHONE NUMBER IS (201) 947-5864.

SIGNATURE /s/ Thomas Pallotta Date May 17, 1996

WITNESSES ARE REQUIRED ONLY IF THIS APPLICATION HAS BEEN SIGNED BY MARK (X) ABOVE. IF SIGNED BY (X), TWO WITNESSES TO THE SIGNING WHO KNOW THE APPLICANT MUST SIGN BELOW, GIVING THEIR FULL ADDRESSES.

_____	_____
SIGNATURE OF WITNESS	SIGNATURE OF WITNESS
_____	_____
NUMBER AND ST ADDRESS	NUMBER AND ST ADDRESS

[Logo] SOCIAL SECURITY ADMINISTRATION

Refer to: 137-44-7490

Office of Hearing and Appeals
18 Rector Street, 10th Floor
Newark, New Jersey 07102
Telephone: (973) 645-3868
Date: August 26, 1998

Thomas N. Pallotta
267 13th Street
Palisades Park, NJ 07650

NOTICE OF HEARING

I have scheduled your hearing for:

Day: Tuesday Date: September 29, 1998 Time: 11:00 a.m.
Room: 5th Floor Address: 18 Rector Street, Newark, NJ 07102

It is Important That You Come To Your Hearing

I have set aside this time to hear your case. If you do not appear at the hearing and I do not find that you have good cause for failing to appear, I may dismiss your request for hearing. I may do so without giving you further notice.

Complete The Enclosed Card

Please complete and return the enclosed card to let me know you got this notice. Use the enclosed envelope to return the card to me within 5 days.

If You Cannot Come To Your Scheduled Hearing

If you cannot come to your hearing at the time and place I have set, call this office immediately. Also mail in the card right away.

To request a change, you must state why you object to the time or place set. You also must state the time and place you want the hearing held. You should do this in writing if at all possible.

If I find that you have good reason, I will reschedule the hearing for a time and place I set. I will also mail you another notice at least 20 days before the date of the hearing.

Travel Costs

When you, a representative, or needed witnesses will travel more than 75 miles one way to the hearing, we can pay certain travel costs. I am enclosing a sheet telling about our rules for doing that. Please call if you want more information.

You May Choose To Have A Person Represent You

If you want to have a representative, please get one right away. You should show this notice to anyone you may appoint. You or that person should also call this office to give us his or her name, address, and telephone number.

Issues I Will Consider In Your Case

The hearing concerns your application of May 17, 1996, for a period of disability and disability insurance benefits under sections 216(i) and 223(a) of the Social Security Act (Act).

I will decide if you have enough earnings under Social Security to be insured for disability insurance benefits. If you do, I must decide if you became disabled while insured.

Under the Act, I may find you disabled only if you have a physical or mental impairment that:

- has prevented you from doing any substantial gainful work; and
- has lasted 12 straight months or can be expected to last for that time or result in death.

To decide if you are disabled, I will follow a step-by-step process until I can make a decision. The issues in this process concern:

- any work you have done since you got sick;
- the severity of your impairment(s); and
- your ability to do the kind of work you did in the past and, considering your age, education and work experience, any other work that exists in the national economy.

Our regulations explain the rules for deciding if you are disabled and, if so, when you became disabled. These rules appear in the Code of Federal Regulations, Title 20, Chapter III, Part 404, Subpart P.

More About The Issues

If you qualify for benefits based on disability, I will also decide if your disability continues. I will consider whether there has been any medical improvement in your impairment(s) or whether one of the exceptions to medical improvement stated in the regulations applies. Unless certain exceptions apply, I will find you still disabled if you have not become able to work.

If You Object To The Issues

If you object to the issues I have stated, you must tell me in writing why you object. You must do this as soon as possible before the hearing.

You May Submit Additional Evidence And Review Your File

If there is more evidence you want to submit, get it to me right away. If you cannot get the evidence to me before the hearing, bring it to the hearing. If you want to see your file before the date of the hearing, call this office.

Your Right To Request A Subpoena

I may issue a subpoena that requires a person to submit documents or testify at your hearing. I will issue a subpoena if it is reasonably necessary for the full presentation of your case.

If you want me to issue a subpoena, you must submit a written request. You should submit the request as soon as possible before the hearing. The request must identify the needed documents or witnesses and their location, state the important facts the document or witness is expected to prove, and indicate why you cannot prove these facts without a subpoena.

What Happens At The Hearing

- You may review your file. If you wish to do so, please arrive 30 minutes before the time set for the hearing. Call us if you want more time.
- You will have a chance to testify and tell me about your case.
- You and, if you appoint one, your representative may submit documents, present and question witnesses, state your case, and present written statements about facts and law.
- I will question you and any other witnesses about the issues in your case. You and any other witnesses must normally testify under oath or affirmation. My staff will record the hearing.

My Decision

After the hearing, I will issue a written decision explaining my findings of fact and conclusions of law. I will base my decision on all of the evidence of record, including the testimony at the hearing. I will mail a copy of the decision to you.

If You Have Any Questions

If you have any questions, please call or write this office. Our telephone number and address are shown on the first page of this notice.

/s/ John M. Farley
JOHN M. FARLEY
Administrative Law Judge

Enclosures

ACKNOWLEDGMENT OF NOTICE OF HEARING

[Filed Sept. 15, 1998]

(Complete this form and return it at once in the envelope provided. No postage is necessary.)

CLAIMANT
Thomas N. Pallotta 137-44-7490

WAGE EARNER

JOHN M. FARLEY, Administrative Law Judge
Tuesday, September 29, 1998, 11:00 a.m.

(Check only one)

☐ I will be present at the time and place shown on the Notice of Hearing. If an emergency arises after I mail this form and I cannot be present, I will immediately notify you at the telephone number shown on the Notice of Hearing.

☒I cannot be present at the time or place shown on the Notice of Hearing. I request that you reschedule my hearing because:

Mr. Farley, The evidence in the record including the May 17, 1996 letter and application you cite which reopens the 1983 claim (continued on pages 2, 3, 4)

Page 3 . . . also, on account of the false statements entered into the wrongful denials by Newark and Baltimore employees after they received revised Radiology reports, confirming and validating End organ damage to several organ systems, I am requesting you issue me a SUBPOENA, to ask I bring to the hearing all Xrays, CT scans, and medical photography which are necessary for the full presentation of my case. This objective evidence is located at 267 13th Street, Palisades Park. Send the subpoena by

certified mail. This is a procedural right. I have a right to that subpoena so I can prove that Social Security personnel entered false statements into the wrongful denials. Also feel free to subpoena the five radiologists who in my case initially misinterpreted the Xrays and CT scans. I have a right to question these witnesses. You have their addresses in the file. The important fact that these witnesses are expected to prove is that they are human and like all human beings these Radiologists sometimes make mistakes when they interpret Xrays and CT scans. Also schedule a day before the hearing for me to go down to the Hackensack District office to review the file and make copies of all documents which I do not have so I can prepare for the hearing. Regulations allow me to do this at each and every level. My revised reports are prepared by four medical experts, competent and reliable consultants in their specialized fields, Professors of Radiology who have documented positive, visible, objective, physical, organic findings of and organ damage, both motor and organic end organ damage. I can go to any medical library and pull out from the medical journals the *same* visible Xray and CT scan findings seen in my Xrays and my CT scans which are documented by those Professors of Radiology who handed in the revised reports concerning my claim. Act intelligently.

NOTE: YOUR REQUEST FOR HEARING MAY BE DISMISSED IF YOU DO NOT ATTEND THE HEARING AND CANNOT GIVE A GOOD REASON FOR NOT ATTENDING. THE TIME OR PLACE OF THE HEARING WILL BE CHANGED IF YOU HAVE A GOOD REASON FOR YOUR REQUEST.

Thomas Pallotta	Sept. 15, 1998	201-947-5864
SIGNATURE	DATE	AREA CODE & PHONE NO.

Also see completed form HA-4632

I have recently moved. My new address is:

[Logo] SOCIAL SECURITY ADMINISTRATION

Refer to: 137-44-7490

Office of Hearing and Appeals
18 Rector Street, 10th Floor
Newark, New Jersey 07102
Telephone: (973) 645-3868
Date: April 12, 1999

Thomas N. Pallotta
267 13th Street
Palisades Park, NJ 07650

NOTICE OF HEARING

I have scheduled your hearing for:

Day: Monday Date: April 26, 1999 Time: 09:00 a.m.
Room: 5th Floor Address: 18 Rector Street, Newark, NJ 07102

It is Important That You Come To Your Hearing

I have set aside this time to hear your case. If you do not appear at the hearing and I do not find that you have good cause for failing to appear, I may dismiss your request for hearing. I may do so without giving you further notice.

Complete The Enclosed Card

Please complete and return the enclosed card to let me know you got this notice. Use the enclosed envelope to return the card to me within 5 days.

If You Cannot Come To Your Scheduled Hearing

If you cannot come to your hearing at the time and place I have set, call this office immediately. Also mail in the card right away.

To request a change, you must state why you object to the time or place set. You also must state the time and place you want the hearing held. You should do this in writing if at all possible.

If I find that you have good reason, I will reschedule the hearing for a time and place I set. I will also mail you another notice at least 20 days before the date of the hearing.

Travel Costs

When you, a representative, or needed witnesses will travel more than 75 miles one way to the hearing, we can pay certain travel costs. I am enclosing a sheet telling about our rules for doing that. Please call if you want more information.

You May Choose To Have A Person Represent You

If you want to have a representative, please get one right away. You should show this notice to anyone you may appoint. You or that person should also call this office to give us his or her name, address, and telephone number.

Issues I Will Consider In Your Case

The hearing concerns your application of May 17, 1996, for a period of disability and disability insurance benefits under sections 216 (i) and 223 (a) of the Social Security Act (Act).

I will decide if you have enough earnings under Social Security to be insured for disability insurance benefits. If you do, I must decide if you became disabled while insured.

Under the Act, I may find you disabled only if you have a physical or mental impairment that:

- has prevented you from doing any substantial gainful work; and
- has lasted 12 straight months or can be expected to last for that time or result in death.

To decide if you are disabled, I will follow a step-by-step process until I can make a decision. The issues in this process concern:

- any work you have done since you got sick:
- the severity of your impairment(s); and
- your ability to do the kind of work you did in the past and, considering your age, education and work experience, any other work that exists in the national economy.

Our regulations explain the rules for deciding if you are disabled and, if so, when you became disabled. These rules appear in the Code of Federal Regulations, Title 20, Chapter III, Part 404, Subpart P.

More About The Issues

If you qualify for benefits based on disability, I will also decide if your disability continues. I will consider whether there has been any medical improvement in your impairment(s) or whether one of the exceptions to medical improvement stated in the regulations applies. Unless certain exceptions apply, I will find you still disabled if you have not become able to work.

If You Object To The Issues

If you object to the issues I have stated, you must tell me in writing why you object. You must do this as soon as possible before the hearing.

You May Submit Additional Evidence And Review Your File

If there is more evidence you want to submit, get it to me right away. If you cannot get the evidence to me before the hearing, bring it to the hearing. If you want to see your file before the date of the hearing, call this office.

Your Right To Request A Subpoena

I may issue a subpoena that requires a person to submit documents or testify at your hearing. I will issue a subpoena if it is reasonably necessary for the full presentation of your case.

If you want me to issue a subpoena, you must submit a written request. You should submit the request as soon as possible before the hearing. The request must identify the needed documents or witnesses and their location, state the important facts the document or witness is expected to prove, and indicate why you cannot prove these facts without a subpoena.

What Happens At The Hearing

- You may review your file. If you wish to do so, please arrive 30 minutes before the time set for the hearing. Call us if you want more time.
- You will have a chance to testify and tell me about your case.
- You and, if you appoint one, your representative may submit documents, present and question witnesses, state your case, and present written statements about facts and law.
- I will question you and any other witnesses about the issues in your case. You and any other witnesses must normally testify under oath or affirmation. My staff will record the hearing.

My Decision

After the hearing, I will issue a written decision explaining my findings of fact and conclusions of law. I will base my decision on all of the evidence of record, including the testimony at the hearing. I will mail a copy of the decision to you.

If You Have Any Questions

If you have any questions, please call or write this office. Our telephone number and address are shown on the first page of this notice.

/s/ John M. Farley
JOHN M. FARLEY
Administrative Law Judge

Enclosures

ACKNOWLEDGMENT OF NOTICE OF HEARING

[Filed April 16, 1999]

(Complete this form and return it at once in the envelop provided. No postage is necessary.)

CLAIMANT
Thomas N. Pallotta 137-44-7490

WAGE EARNER

JOHN M. FARLEY, Administrative Law Judge
Monday, April 26, 1999, 09:00 a.m.

(Check only one)

☐ I will be present at the time and place shown on the Notice of Hearing. If an emergency arises after I mail this form and I cannot be present, I will immediately notify you at the telephone number shown on the Notice of Hearing.

☒ I cannot be present at the time or place shown on the Notice of Hearing. I request that you reschedule my hearing because:

This office has repeatedly violated Social Security rules, and Federal Regulations, and procedural rights of mine including regulations which obviate (prevent) the need for a hearing. (continued on pages 2, 3, 4 and pages 5 and 6)

Page 3: The ALJ must analyze "*all*" of the evidence in the record and provide adequate explanations for disregarding evidence such as misinterpretation of Xrays. 42 USC 423 (D)(5)(b) and 1382C(A)(3)(g). This requires that radiology and medical photography be Subpoened which document end organ damage seen in OLD infarction and heart en-

largement as documented in revised Radiology reports and narrative reports which I handed in. This wrongdoing violates due process rights when laboratory evidence is not subpoenaed where *conflicting reports* exist. See enclosed copy page 594 "*Third*" circuit cases. This office is also violating my procedural right to review my file and make copies of documents which I may not have to prepare for the upcoming hearing. I made several written requests concerning this issue. Regulations don't require that I phone this office. Written notification is sufficient. Regulations 404.916(B)(3) and 1985 USC 552. This office has also repeatedly violated regulations which obviate (prevent) the need for a hearing because I meet and exceed the criteria requirements to the 1979-1986 4.03 listing. [Copy enclosed]

Page 1195. This office by scheduling two hearing dates one in 1998 and again in 1999, violated the Federal Court rulings, which come out of the Martin and Hyatt cases which I handed in. All claimants who can show *similar* end organ damage *are legally disabled* under the law. I handed I evidence of similar end organ damage to Heart plus much more. The Secretary may not violate these federal court rulings by manipulating the criteria from the listings. Regulation 416.1448 protects all ALJ's from getting intertwined with this wrongdoing, and allows all ALJ's to approve the claim without holding a oral hearing. In the "Acknowledgment of Notice of Hearing" stamp dated Sept. 15, 1998, *This office* falsely stated on that form "The Place of the hearing will be changed if you give good reason." The statement was false *because* once again in 1999 *this office* has again *tried* to schedule a hearing in Newark after I gave good reason to not do this, back in Sept. 15, 1998, thereby *violating* Reg. 20 CFR 404.936(c)(1).

NOTE: YOUR REQUEST FOR HEARING MAY BE DISMISSED IF YOU DO NOT ATTEND THE HEARING AND CANNOT GIVE A GOOD REASON FOR NOT

ATTENDING. THE TIME OR PLACE OF THE HEARING WILL BE CHANGED IF YOU HAVE A GOOD REASON FOR YOUR REQUEST.

Thomas Pallotta	April 16, 1999	201-947-5864
SIGNATURE	DATE	AREA CODE & PHONE NO.

Related documents also included.

I have recently moved. My new address is:

_____

[Logo] SOCIAL SECURITY ADMINISTRATION

Refer To:
137-44-7490
Thomas Pallotta

Office of Hearing and Appeals
18 Rector Street, 10th Floor
Newark, New Jersey 07102
Telephone: (973) 645-3868
Date: April 26, 2001

Thomas N. Pallotta
267 13th Street
Palisades Park, NJ 07650

NOTICE OF HEARING

I have scheduled your hearing for:

Day: Monday Date: May 21, 2001 Time: 9:00 AM

Room: Address: 5th Floor, 18 Rector Street Newark, NJ 07102

It Is Important That You Come To Your Hearing

I have, set aside this time to hear your case. If you do not appear at the hearing and I do not find that you have good cause for failing to appear, I may dismiss your request for hearing. I may do so without giving you further notice.

Complete The Enclosed Form

Please complete and return the enclosed form to let me know you got this notice. Use the enclosed envelope to return the form to me within 5 days.

If You Cannot Come to Your Scheduled Hearing

If you cannot come to your hearing at the time and place I have set, call this office immediately. Also mail in the form right away.

To request a change, you must state why you object to the time or place set. You also must state the time and place you want the hearing held. You should do this in writing if at all possible.

If I find you have a; good reason, I will reschedule the hearing for a time and place I set. I will also mail you another notice at least 20 days before the date of the hearing.

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You May Choose To Have A Person Represent You

If you want to have a representative, please get one right away. You should show this notice to anyone you may appoint. You or that person should also call this office to give us his or her name, address, and telephone number.

Issues I Will Consider In Your Case

The hearing concerns your application of May 17, 1996, for a period of disability and Disability Insurance Benefits under sections 216(i) and 223(a) of the Social Security Act (Act).

I will decide if you have enough earnings under Social Security to be insured for Disability Insurance Benefits. If you do, I must decide if you became disabled while insured.

Under the Act, I may find you disabled only if you have a physical or mental impairment that:

- has prevented you from doing any substantial gainful work; and
- has lasted 12 straight months or cane be expected to last for that time or result in death.

To decide if you are disabled, I will follow a step-by-step process until I can make a decision. The issues in this process concern:

- any work you have done since you got sick;
- the severity of your impairment(s); and
- your ability to do the kind of work you did in the past and, considering your age, education and work experience, any other work that exists in the national economy.

Our regulations explain the rules for deciding if you are disabled and, if so, when you became disabled. These rules appear in the Code of Federal Regulations, Title 20, Chapter III, Part 404, Subpart P.

More About the Issues

I plan to look with special care into the issue of **[ENTER PERSONALIZED LANGUAGE FURTHER DESCRIBING THE ISSUES]**.

If you qualify for benefits based on disability, I will also decide if your disability continues. I will consider whether there has been any medical improvement in your impairment(s) or whether one of the exceptions to medical improvement stated in the regulations applies. Unless certain exceptions apply, I will find you still disabled if you have not become able to work.

If You Object To The Issues

If you object to the issues I have stated, you must tell me in writing why you object. You must do this as soon as possible before the hearing.

You May Submit Additional Evidence And Review Your File

If there is more evidence you want to submit, get it to me right away. If you cannot get the evidence to me before the hearing, bring it to the hearing. If you want to see your file before the date of the hearing, call this office.

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I may issue a subpoena that requires a person to submit documents or testify at your hearing. I will issue a subpoena if it is reasonably necessary for the full presentation of your case.

If you want me to issue a subpoena, you must submit a written request. You should submit the request as soon as possible before the hearing. The request must identify the needed documents or witnesses and their location, state the important facts the document or witness is expected to prove, and indicate why you cannot prove these facts without a subpoena.

What Happens At The Hearing

- You may review your file. If you wish to do so, please arrive 30 minutes before the time set for the hearing. Call us if you want more time.
- You will have a chance to testify and tell me about your case.
- You and, if you appoint one, your representative may submit documents, present and question witnesses, state your case, and present written statements about the facts and law.
- I will question you and any other witnesses about the issues. You and any other witnesses must normally testify under oath or affirmation. My staff will record the hearing.

My Decision

After the hearing, I will issue a written decision explaining my findings of fact and conclusions of law. I will base my decision on all the evidence of record, including the testimony at the hearing. I will mail a copy of the decision to you.

If You Have Any Questions

If you have any questions, please call or write this office. Our telephone number and address are shown on the first page of this notice.

DENNIS O'LEARY
Administrative Law Judge

Enclosures

This is an Exhibit for the reviewing court (3rd Circuit)

ACKNOWLEDGMENT OF NOTICE OF HEARING

[Filed May 7, 2001]

(Complete this form and return it at once in the envelope provided. No postage is necessary.)

CLAIMANT
Thomas N. Pallotta 137-44-7490

WAGE EARNER

Hearing Scheduled: Monday, May 21, 2001 at 9:00am

Location of Hearing: 5th Floor, 18 Rector Street, Newark, NJ 07102

Social Security Number: 137-44-7490

Hearing Office: SSA, Office of Hearings & Appeals
ALJ: DENNIS O'LEARY

(Check only one)

☐ I will be present at the time and place shown on the Notice of Hearing. If an emergency arises after I mail this form and I cannot be present, I will immediately notify you at the telephone number shown on the Notice of Hearing.

☒ I cannot be present at the time and place shown on the Notice of Hearing. I request that you reschedule my hearing because of the following good reasons:

Mr. O'Leary like Mr. Farley violates Richardson v. Perales, 91 A. Ct. 1420 and Social Security Regulations, (continued on pages 2-11)

This acknowledgment of receipt is eleven pages long and includes a copy of notice of hearing dated April 26, 2001 and copy of April 11, 2001 letter to Senator Torricelli and return receipt, and gives 34 *good reasons* (*all issues*) for

denying Mr. O'Leary's request to schedule a hearing on May 21, 2001. O'Leary requested these *good reasons* be provided.

Page 3: 3. O'Leary abandons his duty to conduct a full, fair, and complete hearing by violating court rulings and Social Security regulations detailed in one and two above. O'Leary gives no appropriate written rationale for engaging in the misconduct and violation of law.

4. Properly dated medical records referring to serious illness existing before 1983 shows that this claimant is legally disabled in accordance with the 1979-1986 4.03 listing and 3rd circuit court rulings governing that listing. Newark, ALJ office has for years, 1998-2001 refused to give claimant a full and fair hearing by refusing to issue subpoenas in compliance with hearing notices and law. O'Leary continues with this misconduct.

5. In accordance with 404.916(B)(3) this claimant wants to review his file again at an earlier time than hearing date to make necessary copies to prepare for hearing. O'Leary send the entire medical file to Hackensack office with directions to contact claimant for purposes of reviewing file and making copies as law requires when request is made.

6. The physicians and other professional personnel identified in the Feb. 28, 2001 subpoena request, who engaged in wrongdoing are witnesses who must testify under oath for the reviewing court, and therefore must be subpoened in compliance with O'Leary's hearing notice and applicable Social Security regulations, and applicable court rulings. O'Leary abandons his duty to do so.

7. Before O'Leary can issue a written decision explaining his findings of fact, he must first receive testimony under oath at the hearing from individuals who engaged in the wrongdoing named in the Feb. 28, 2001 subpoena request.

8. Since O'Leary like chief ALJ Farley is denying Tom Pallotta a full fair and complete hearing by refusing to issue subpoenas as law requires, where the subpoenas are necessary for the full presentation of the case, as described in O'Leary's notice of hearing, Tom Pallotta now requires that O'Leary, like Farley, be subpoened to appear before a different ALJ for cross-examination by Tom Pallotta, concerning why he, like Farley continues to violate Richardson v. Peales, 91 S. Ct. 1420.

NOTE: YOUR REQUEST FOR HEARING MAY BE DISMISSED IF YOU DO NOT ATTEND THE HEARING AND CANNOT GIVE A GOOD REASON FOR NOT ATTENDING. THE TIME OR PLACE OF THE HEARING WILL BE CHANGED IF YOU HAVE A GOOD REASON FOR YOUR REQUEST.

Signature: Thomas Pallotta Date: 4/30/2001 Phone: _____

Hackensack SSA office

Please mail this acknowledgement of receipt (Notice of Hearing) to: SSA, 18 Rector St. 10th Floor, Newark, N.J. 07102-9871.

Hackensack, Please forward to Newark ALJ office

ACKNOWLEDGMENT OF RECEIPT
NOTICE OF HEARING

[Filed July 10, 2003]

(Complete this form and return it at once in the envelope provided. No postage is necessary.)

CLAIMANT
Thomas N. Pallotta 137-44-7490

WAGE EARNER

Hearing Scheduled: Friday, July 18, 2003 a 11:00 am

Location of Hearing: Office of Hearings ad Appeals, 18 Rector Street, 5th Floor, Newark, NJ

Social Security Number: 137-44-7490

Hearing Office: SSA, Office of Hearings & Appeals
ALJ: DEAN W. DETERMAN AND NEWARK ALJ OFFICE, Director Mr. Caviano.

EXHIBIT

(Check only one)

☐ I will be present at the time and place shown on the Notice of Hearing. If an emergency arises after I mail this form and I cannot be present, I will immediately notify you at the telephone number shown on the Notice of Hearing.

☒ I CANNOT BE PRESENT AT THE TIME AND PLACE SHOWN ON THE Notice of Hearing. I request that you reschedule my hearing because: See enclosed June 30, 2003 (exhibit 71) to Mr. Caviano (13 pages). See enclosed June 13, 2003 (exhibit 70) to Mrs. Palmer (OIG) (6 pages).

Due to continuing ALJ violations of hearing procedure rules 1998 to Present (2003)

3. Determan, like O'Leary *violates* procedures rules under 404.916(B)(3) by not forwarding file to Hackensack as plaintiffs "previously requested" to Mr. O'Leary. ALJ has an open door policy to view and copy evidence in file before hearing.

4. Mr. Caviano, in Determan's notice of hearing, there is a *conspicuous absence* and *material omission* of any *discussions* that he will "as law requires" inquire fully into the 85 issues of wrongdoing detailed in the Jan. 22, 2003, *SSA suspect listing*, *SSA Document Exhibit 67*, which the OIG investigated for 4 months for which the OIG can offer no hint of disagreement concerning the wrongdoing committed by SSA officials. Exhibit 67 is part and parcel of final brief filed with appeals council and is part and parcel of SSA related documents that this Plaintiff has submitted into evidence. The *OIG forwarded Exhibit 67* to the Newark ALJ office. The notice of hearing discusses that he will only consider those limited issues which he details which *in fact have already been decided in Plaintiff's advantage Based on* evidence contained in the record. Such limited hearings that consider limited issues, *and not "ALL issues" raised* by *plaintiffs violate the law*. Under law Determan is held to a high standard in discharging this fact finding requirement into ALL 85 issues. Determan must issue specific findings on each of the 85 issues. Determan's decision shall be *in writing* and contain finding of fact and statements of *reasons* concerning each of the 85 issues of SSA wrongdoing *raised* by this plaintiff. Also "*each*" physical impairment detailed on pages one and two of this Exhibit 71 is an "*issue*". Therefore under law Determan must address *each* impairment in *similar fashion*. See 20 CFR 404.924(A) and 404.927 (1980) and 494 F. Supp. 932 at 935 and 632 F.2d 296 at 299 and 416.1446(B) and 382 F. Supp. 913 and 416.1446(A) and 404.939. Failure to obey these laws, *Prejudice this plaintiff* and *taints* the hearing.

NOTE: YOUR REQUEST FOR HEARING MAY BE DISMISSED IF YOU DO NOT ATTEND THE HEARING AND CANNOT GIVE A GOOD REASON FOR NOT ATTENDING. THE TIME OR PLACE OF THE HEARING WILL BE CHANGED IF YOU HAVE A GOOD REASON FOR YOUR REQUEST.

Signature: Thomas Pallotta

Date: July 1, 2003

Phone: 201-947-5864

On account of cardiac and other end organ damage etc, and hot weather, exhibit 71 and etc, could not be dropped off at Hackensack earlier than July 10, 2003.

[LOGO]

SOCIAL SECURITY

Refer to: GSW-03-301

Office of the Regional Chief
Administrative Law Judge
Region II
26 Federal Plaza—Room 34-116
New York, New York 10278

December 18, 2003

Thomas Pallotta
267 13th Street
Palisades Park, NJ 07650

Dear Mr. Pallotta:

Your case has been forwarded to the White Plains Hearing Office. The hearing office will schedule a hearing and notify you at least 20 days before the date the hearing is scheduled.

Any questions regarding this matter may be directed to the Regional Attorney, Bonnie Muir, at 212-264-8819, ext 3042.

Sincerely,

/s/ G. STEPHEN WRIGHT
G. Stephen Wright
Regional Chief Administrative Law Judge.

Honorable Discharge

from the Armed Forces of the United States of America

This is to certify that

[redacted] [redacted] [redacted]

was Honorably Discharged from the

United States Army

on the [redacted] day of [redacted]. This certificate is awarded as a testimonial of Honest and Faithful Service

[redacted]

P-25

BEST AVAILABLE COPY

No. 05-1031

FILED
MAY 3 - 2006
OFFICE OF THE CLERK
SUPREME COURT, U.S.

IN THE

Supreme Court of the United States

THOMAS PALLOTTA,
Petitioner,

v.

JOANNE B. BARNHART
Commissioner of Social Security,
Respondent.

Petition for a Writ of Certiorari to the United States Court of Appeals for the Third Circuit

PETITION FOR REHEARING

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PETITION FOR REHEARING

This Petition for Rehearing presents issues of imperative public importance and of national significance and goes beyond the merits detailed in the Petition for a Writ of Certiorari which documented constitutional due process violations. This Petition for Rehearing details that government SSA personnel i.e. employees from four states are engaging in criminal activity of destroying records relevant to disability claims. S. Ct. R. 12(7) allows petitioner to cite or quote from the appeals court record that was filed by that court in order to prove that government employees destroy disability records.

American citizens nationwide do not want government employees to destroy records contained in disability files. The Department of Justice, the Solicitor General also does not

want government employees destroying records contained in disability files. Therefore, the Department of Justice, should also, as a show of good faith, request that the Petition for Rehearing be granted. This Supreme Court should grant this Petition for Rehearing in order to send a strong message to all government employees that the Supreme Court and the Department of Justice does not tolerate government employees who engage in criminal activity of destroying records i.e. evidence contained in disability files of claimants who file for benefits. Otherwise government employees will think to themselves, that they can, whenever they please, continue to destroy records, because they saw that this court did not correct and remedy this injustice. The third circuit court of appeals knew about this criminal activity of government employees destroying records relevant to disability claims, but instead of correcting this injustice by remanding, that court asserted in the panel opinion that is had no subject matter jurisdiction. Petition, appendix 1a to 6a. Such egregious conduct by the court of appeals is a departure from the accepted and usual course of judicial proceedings which calls for an exercise of this Court's supervisory power, S. Ct. R. 10(A) to correct this injustice. The issue of criminal activity of destroying disability records was raised in SSA appeals council papers, and district court opposition papers, and appeals court proceedings.

Therefore this issue has been preserved for appeal.

This issue of government criminal activity of destroying records was detailed in Petitioner's Reply Brief that was received and filed by the appeals court on Dec. 21, 2004, plus this criminal activity is also detailed in petitioner's Dec. 20, 2004 supplemental appendix which was filed by the court of appeals on January 13, 2005. The merits panel granted petitioner's motion to file the supplemental appendix. Therefore, this issue that government employees are engaging in criminal activity of destroying records i.e. evidence was

preserved for appeal. Furthermore, since the reply brief and supplemental appendix were both filed by the third circuit court of appeals, this means, that all citizens nationwide are now allowed access to copies of these documents in accordance with 28 U.S.C. § 1913 simply by paying the court fees as required by law. The third circuit court of appeals docket number is 04-3749. On April 19, 2006, this Supreme Court by phone advised petitioner that this court never requested that the appeals court certify and transmit the record i.e., petitioner's brief, reply brief, and supplemental appendix to this court in accordance with S. Ct. R. 12(7). This court knew from the petition for a Writ of Certiorari that petitioner filed a constitutional due process procedural claim and that the fundamental guaranty of due process is absolute, and that the petition was uncontested by the Department of Justice, Solicitor General, Paul D. Clement.

This was good reason to request that the court of appeals certify and transmit the record to the Supreme Court, S. Ct. R. 12(7), and good reason to grant the petition for a Writ of Certiorari.

A listing of twenty-five documents i.e. records i.e. evidence which government employees destroyed, which were part of the administrative record which relates to petitioner's disability claim were detailed in the above reply brief and supplemental appendix. The twenty-five missing documents were received by SSA offices in four states.

The appeals court panel opinion does not refute with appropriate rationale or even try to deny the fact that government employees destroyed documents in the administrative record. There is no mention from the panel concerning this issue of government criminal activity of destroying records relating to disability claims in the panel opinion filed on August 18, 2005, as evidenced in the petition for a Writ of Certiorari appendix[1] 1a to 6a.

The petition for a Writ of Certiorari was a constitutional due process procedural claim. The question presented the facts and legal argument went uncontested by the Department of Justice, Solicitor General Paul D. Clement. Opposing counsel has a obligation to this Supreme Court to point out in a brief in opposition any misstatement of fact or law made in the petition for a Writ of Certiorari. S. Ct. R. 15(2).

This was not done because the government waived its right to file a response to the petition in this case. Therefore, the entire contents of the petition, which was a constitutional due process claim, must be accepted as true as a matter of law, because the Solicitor General Paul D. Clement did not contest the petition. By not contesting the petition the Department of Justice is agreeing to the question presented, facts, legal argument, and applicable laws of case doctrine detailed in that petition.

Parties who file no document will not qualify for any relief from this court. S. Ct. R. 12(6). This Supreme Court should have reviewed the "Whole Record" filed by the appeals court after learning that the appeals court violated numerous applicable precedent *stare decises* laws of case doctrine detailed in the petition. *Universal v. N.L.R.B.*, 71 S. Ct. 456, 457, 461-466 (1951). This court did not do so.

Going back to S. Ct. R. 12(6), I believe the word parties includes those parties who do not defend against constitutional due process claims. When this court denied the petition for a Writ of Certiorari this court in fact answered "no" to the constitutional due process question presented in that petition.

Opposing counsel who defended the case in the appeals court proceedings states falsely in appellee brief that petitioner "makes unfounded allegations of evidence destruction." Appellee brief page 16. On account of that false statement by opposing counsel petitioner prepared the December 20, 2004 reply brief which the court filed on December 21.

2004 and also prepared the supporting December 20, 2004 supplemental appendix which was filed by the court on January 13, 2005 which both documents now detail twenty-five items of evidence i.e. records, documents relating to the disability claim that were destroyed by government SSA employees who work out of SSA component offices located in four different states.

This court had subject matter jurisdiction to grant the petition because petitioner gave this court a final disposition notice from the appeals council, petition appendix 16a. A final disposition is a final decision that effects judicial review.

The Poms, program operations manual system, disability insurance "Rules of Administrative Finality" 27505.001 details "in general, disability determinations or decisions are considered to be "final" when notice of such determinations or decisions have been released. The date that a decision becomes final is generally the date of notification from the highest level of appeal that has been utilized."

Petitioner became legally disabled in 1982 long before expiration of insured status 1986, as explained in petition. SSA, District Court, and appeals court do not contest that petitioner is legally disabled in 1982. Rather SSA is trying to wrongfully deny petitioner his constitutional right to disability benefits by circumventing the law by invoking *res judicata*. The lower courts affirmed erroneously. A person's constitutional rights are violated if disability benefits i.e., constitutionally protected property rights are withheld where claimants become legally disabled prior to expiration of insured status. When claimants are legally disabled prior to expiration of insured status as with this petitioner then SSA may not invoke *res judicata* or deny reopening plus claimant is entitled to disability benefits prior to expiration of insured status. *Chenoweth v. Weinberger*, 421 F. Supp. 955, 960 (1976).

The Department of Justice the Solicitor General, Paul D. Clement did not file opposition papers to contest that petitioner is legally disabled in 1982. Therefore as a matter of law petitioner is legally disabled in 1982. Therefore to correct and remedy this injustice petitioner must be given disability benefits retroactive to 1982. The Supreme Court must correct and remedy this constitutional injustice of denying constitutionally protected disability benefit property rights to people who are legally disabled. The Supreme Court has a duty and obligation to correct and remedy constitutional due process claims especially when constitutional claims go uncontested by the Department of Justice. The guarantee of procedural fairness flows from the 5th and 14th amendment due process clauses of the constitution.

The Supreme Court just like the lower courts must follow precedent Supreme Court law governing constitutional issues of due process and finality as detailed in the petition and must not depart or vary from precedent Supreme Court law unless entirely satisfied. "The fundamental guaranty of due process is absolute."

Hammond Packing Co. v. Arkansas, 29 S. Ct. 370, 379 (1909). The Supreme Court has the duty and obligation to grant this Petition for Rehearing because government employees are destroying records relevant to disability claims. This issue is of imperative public importance and affects all citizens nationwide because all citizens need the assurance that the Supreme Court and Department of Justice will not tolerate criminal activity of destroying records relevant to disability claims by SSA government employees.

When SSA destroys records this is a injustice. Claim must then be remanded for a full and fair evidentiary hearing. *Fowler v. Califano*, 596 F.2d 600, 604 (1979).

Government employees destroyed records as detailed in this Petition for Rehearing and as detailed in the above Reply

Brief and Supplemental Appendix which were filed by the Third Circuit Court of Appeals Docket Number 04-3749.

This criminal activity results in a incomplete administrative record. Therefore based on constitutional due process grounds this Supreme Court must remand to the appeals council for a full and fair evidentiary hearing so that petitioner can supplement the record with the missing administrative records i.e. the evidence that government employees have destroyed over the years.

A incomplete administrative record warrants remand. *Callis v. D.H.H.S.*, 877 F.2d 890, 892 (1989).

The reason why this Petition for Rehearing affects millions of people nationwide is because in addition to government employees destroying records in New Jersey and New York SSA component offices, government employees are also destroying records being received by the Falls Church Virginia SSA OHA offices, and the Baltimore, Maryland SSA ODIO headquarters offices. This is documented in the above Reply Brief and Supplemental Appendix filed by the Third Circuit Court of Appeals. Millions of people nationwide send disability related records to these two government SSA offices in Falls Church, Virginia and Baltimore, Maryland.

Government employees are even destroying written FOIA requests relevant to disability claims that are being sent to the Falls Church Virginia OHA FOIA offices. Government employees destroyed three handwritten FOIA requests that petitioner mailed to the Falls Church Virginia OHA. FOIA regulations were violated.

Toni Talford, division of congressional and public inquiries Fall Church Virginia wrote to petitioner to ask petitioner to resubmit three written FOIA requests that were missing from petitioner's records file. Toni Talford explained that the FOIA requests were nowhere to be found at the OHA offices,

causing her to write back requesting I resubmit the FOIA requests. I did so as advised by Toni Talford. The FOIA requests were previously received by the OHA by certified mail. See Toni Talford's letter in the above supplemental appendix page 52. The Falls Church Virginia OHA building has its own FOIA office that handles FOIA requests relating to disability claims. The personnel from that OHA FOIA office include Mr. Wolfe, Margie David information disclosure specialist, and others. Supervisor Toni Talford would not have written back to petitioner to ask that FOIA requests be resubmitted if the FOIA requests were in the OHA FOIA offices. Even FOIA requests received by the Hackensack SSA district offices were destroyed and missing from the Records file. See above supplemental appendix page 55.

Social Security Regulations 20 CFR 416.912(B)(3) explains "evidence is anything you or anyone else submits to us . . . that relates to your claim."

SSA employees have a duty and obligation to file all evidence and all information collected from claimants and anyone else that relates to disability claims into each claimant's own disability file.

The records detailed in the Reply Brief and Supplemental Appendix were destroyed because they are not listed in the ALJ exhibit list that opposing counsel gave to the appeals court as evidenced in the December 3, 2004 brief that opposing counsel filed with the court. All records relevant to disability claims that are received by SSA employees must be listed in the ALJ exhibit list. The ALJ exhibit list that opposing counsel filed with the appeals court must be complete otherwise an erroneous incomplete ALJ exhibit list misleads both petitioner and the courts.

This Petition for Rehearing should be granted because the Department of Justice does not want SSA employees engaging in the injustice of destroying records relevant to

disability claims. I believe the Supreme Court takes the same position.

This Supreme Court should grant the Petition for Rehearing so that petitioner can supplement the incomplete record with the missing administrative records that were destroyed by government employees.

This is proper grounds for the Department of Justice to agree that the Supreme Court grant the Petition for Rehearing. *Callis v. D.H.H.S.*, 877 F.2d 890, 892 (1989).

The Third Circuit Court of Appeals is in error of law for not remanding for a full and fair evidentiary hearing to allow petitioner to supplement the record with the missing documents that were destroyed by government employees. The appeals court was required to remand. A incomplete administrative record warrants remand. *Callis v. D.H.H.S.*, 877 F.2d 890, 892 (1989).

The appeals court was required to remand when records are destroyed. *Fowler v. Califano*, 596 F.2d 600, 604 (1979).

This appeals court failure to correct and remedy this criminal activity of destroying records by simply remanding the case so petitioner can supplement the record with the missing administrative records violates the above laws of case doctrine, and therefore is a departure from the accepted and usual course of judicial proceedings, as to call for an exercise of this court's supervisory power. S. Ct. R. 10(A).

This Petition for Rehearing should be granted because the Falls Church Virginia OHA and the Baltimore Maryland ODIO receive millions of disability records each year from all over the country and it is important to all claimants and to all attorneys nationwide, that the Supreme Court take appropriate action to correct and remedy the problem detailed in this Petition for Rehearing.

CONCLUSION

This Petition for Rehearing should be granted.

Respectfully submitted,

THOMAS PALLOTTA
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267 13th Street
Palisades Park, NJ 07650
(201) 947-5864

CERTIFICATION

Pro se petitioner certifies that this Petition for Rehearing is Presented in good faith and not for delay.

This Petition for Rehearing is limited to the grounds detailed in Supreme Court Rule 44.2.

_____

Thomas Pallotta
Pro se